

### Local Public Agency Right of Way Operations Manual

#### Title Abstracting

The following procedures document the responsibilities of Right of Way Title Agents for providing title abstracts for all property being acquired for public transportation projects.

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#### 1. Initial Title Abstracting Procedures

##### 1.1 Procure Tax Maps

When the LPA Title Section receives the final location Title Agents procure tax maps from the Courthouse Tax Assessor and provide the tax maps to the LPA ROW Survey, Maps and Deeds Section.

##### 1.2 Preliminary Abstracting

Upon receipt of the Tax Map Overlay from the LPA ROW Survey, Maps and Deeds Section, the Title Agent conducts the following preliminary title abstracting activities (such activities are charged as ROW Incidentals, as defined in the Definitions Section of the LPA ROW Operations Manual):

1. Identifies tax parcel numbers and the book and page (or document numbers) reference.
2. Researches current ownership at the Courthouse and makes copies. Title Agents take the name that corresponds with the tax parcel number and copy that individual's deed. This information is noted on the tax roll or the tax parcel property card.
3. If ownership is not conveyed by deed (for example, last will and testament, Chancery Court Decrees, subdivision plats, city code books, and other conveyance documents), the Title Agent copies all referenced instruments for adequate property descriptions.
4. Reviews conveyance descriptions for reference to prior deeds and plats and pulls all documents referenced in legal descriptions.
5. Provides copies of Preliminary Title Abstracting Information to District Surveyors and the project file.

#### 2. Title Abstract Preparation

When complete, a Title Abstract [ROW 039] consists of the following:

- Ownership of Title [a component of ROW 039]
- Tax Abstract [ROW 760, a component of ROW 039]
- Deraignment of Title including the 32-year History [a component of ROW 039]

##### 2.1 Materials Provided for Abstracting

Upon receipt of the preliminary right of way plans or the Parcel List and the Consolidated Title Work Map (CTWM) from the LPA ROW Survey Maps and Deeds Section, a Title Agent is assigned to complete title research. The CTWM generally includes the Final ROW Plans superimposed on the property map. The CTWM also can include aerial photographs, quadrangle sheets, and other pertinent and available information.

##### 2.2 Title Abstract Research

Title Abstracts [ROW 039] are developed through careful examination, investigation, and analysis of various county public records including the following:

- Deeds
- Wills

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- Mortgages
- Deeds of trust
- Notices of lis pendens
- Notices of construction liens
- Federal tax liens
- Judgment rolls in the Office of the Circuit Court
- Records of current and delinquent taxes and tax sales
- Suits pending in the courts of the county in which the property is located
- Decrees in Chancery Court
- Bankruptcies
- Proceedings in probate and guardianship
- All liens and encumbrances of every nature

### **2.3 32-Year History**

The ownership history dating back a minimum of 32 years must be documented for all Title Abstracts [ROW 039]. Title Agents are ideally looking for a Warranty Deed around this 32 year time period. If there is not a Warranty Deed, the Title Agent continues back into the chain of title until one is found. If no Warranty Deed is found, the Title Agent must search back until the patent is found. The 32-year timeframe is based on the statute of limitations to file an adverse possession suit [10 years], plus the statute of limitations for a person under some sort of disability to file a suit [21 years], plus one (1) year added as a precautionary measure.

### **2.4 Deceased Parties**

If a deceased party is identified, the Title Agent adds the words "heirship affidavit needed" in the remarks section of the Ownership of Title page of the abstract as a means of notifying the acquisition agent of the need to identify all heirs. The Title Agent also notes on the Abstract Ownership Sheet the type of ownership, such as JTROS (Joint Tenant Rights of Survivorship).

### **2.5 Acquiring Easements**

When acquiring property that is adjacent to an easement owned by the same property owner, the LPA makes its best effort to acquire that easement. It is the LPA's policy to acquire full title on easements adjacent to property the LPA is acquiring. To assist in the acquisition of easements, the LPA ROW Survey Maps and Deeds Section identifies easements on ROW Maps. To assist in the acquisition process, Title Agents obtain easements of record for contiguous parcels as shown on the ROW Acquisition Map.

### **2.6 Distribution of Title Abstract**

Title Abstracts are transferred to the LPA ROW Survey, Maps and Deeds Section.

## **3. Title Abstract Updates**

Title Agents complete Title Abstract [ROW 039] updates in the following situations:

- Changes in original ownership or liens are identified;
- Abstract is outdated

If a Title Abstract [ROW 039] update is needed, the Title Agent takes a copy of the original Title Abstract [ROW 039] to the Courthouse and documents all changes from the original date to the current date. If there are no changes, the Title Agent notes "no changes" on the Ownership of Title Page and dates it with the current date.

The updated Title Abstract [ROW 039] includes the Ownership of Title, Tax Abstract [ROW 760], Deraignment of Title, and any newly recorded instruments.

## **Title Abstracting**

### **3.1 Change in Original Ownership or Liens**

The Title Abstract [ROW 039] is updated if a change in the original ownership or liens is identified. The update is documented in the 32-Year History. If a change has occurred since the original Title Abstract [ROW 039] was prepared, the Title Agent conducts additional courthouse research and prepares a Title Abstract [ROW 039] update.

The condition of the owner's title may change between the time of the initial Title Abstract [ROW 039] and the time of acquisition. If during the Appraisal, Relocation, or Acquisition stages, information is received indicating a change in the Title Abstract [ROW 039], the Title Section updates the Title Abstract [ROW 039] and advises other ROW Section(s) of changes.

### **3.2 Outdated Abstracts**

If the Title Abstract [ROW 039] is more than 2 years old (rural) or 1 year old (urban), every effort is made to update the title abstracts prior to being provided to the other LPA ROW Sections. The date of the Title Abstract [ROW 039] is posted at the bottom of the Title Abstract's Ownership of Title Page [ROW 039].

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The following procedures document the responsibilities of Right of Way Agents for acquiring property needed for public transportation projects. Real property interests are acquired by donation, purchase, or eminent domain proceedings.

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#### 1. Acquisition Preparation Procedures

##### 1.1 Pre-Kick Off Meeting Acquisition Procedures

The Acquisition Supervisor notifies Acquisition Agents of assignment to a project. The Acquisition Agents make copies of the abstracts from the permanent file upon assignment of the project, or before.

##### 1.2 Project Acquisition Kickoff Meeting

Upon receipt of the project start date, the Coordinator schedules a "project acquisition kickoff meeting" through appropriate personnel. The "project acquisition kickoff meeting" is a short meeting of the entire acquisition project team (including, but not limited to Acquisition Agents, Relocation Agents, Appraisers, Property Management Agents, Survey, Maps & Deeds Technicians, FHWA, Utility Coordinators, Pre-Construction Engineers, and other staff, as appropriate) to establish the basic project objectives.

The project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project. The topics discussed include the following:

1. Review project files
2. Project start and end dates, if known
3. Contract letting schedule and desired possession date
4. Project purpose and benefits
5. Contact information for:
  - All appropriate project personnel
6. Review of maps
7. Discuss Staffing
8. Establish timelines
9. Tour the project by map, vehicle, and/or foot to become familiar with and oriented to the proposed highway's route and the acquisition areas. In particular, look for potential property owner and displacee issues. Bring potential issues to the attention of appropriate supervisory personnel with authority to make decisions.
10. Identify priority parcels. Priority parcels may include those involving relocation of displacees, relocation of utilities, or other complex parcels (such as, those involving improvements, hazardous waste, government agencies, partnerships, businesses, churches, casinos, associations, estates, multiple owners, and out-of-state owners). The Appraisal Supervisor, in coordination with the Appraisal Team Leader and the District Coordinator, determines the order in which parcels are appraised and acquired.
11. Number and size of underground storage tanks as well as any other information on potentially contaminated sites.
12. Review environmental commitments.
13. Review special construction features.

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### 1.3 Materials Furnished to Acquisition Agents<sup>1</sup>

At the outset of the acquisition process, Acquisition Agents are provided deeds and other instruments, ROW Acquisition Maps, completed appraisal documents, the environmental document, the environmental commitment sheet, construction plans, and plan profile sheets. In addition, the Comparable Sales Brochure is made available for their review at a central location. The processes by which the Acquisition Agents receive these materials are described below.

The Review Appraiser provides the original appraisal report to the Acquisition Supervisor and then the original appraisal report is filed. The Review Appraiser provides the Acquisition Supervisor with copies of the completed appraisal documents. The Acquisition Supervisor distributes copies of the documents in an appropriate manner.

During the project, the Comparable Sales Brochure is available for review through the appropriate channels.

### 1.4 Acquisition File Preparation

For each parcel assigned to them, the Acquisition Agent assembles all instruments and documents into an Acquisition File. These instruments and documents include the following:

- Title Abstract, check to see if current
- ROW Acquisition Map (One (1) copy each for property owner(s), lien holder(s), and Acquisition File. On each copy, highlight the acquisition, easement, and uneconomic remnant areas. Do not reduce copies provided to property owners. The scale of the map copies must be the same as that on the ROW Acquisition Map and deed.)
- Tax maps, if available
- Aerial maps, if available
- County/local maps (from county, city, economic development office, tax assessor, etc., if needed)
- Original and copy of FMVO, completed, but unsigned and undated, for each type of deed involved
- Internal Revenue Service Request for Taxpayer Identification Number and Certification, W-9 Forms, for each property owner
- List of potentially contaminated sites including underground storage tanks
- Instruments (including each type of deed involved, permanent easement, temporary easement, and partial release of mortgage, as applicable)
- *Citizen's Right of Way Acquisition Guide* (always have several copies on hand)
- Minority Vendor Self Certification Form [see Acquisition Forms Index – Minority Vendor Self Certification Form]
- Copy of Appraisal with Appraisal Reviewer Sheet on top
- Record of Heirs Form
- Corporate Resolution and Order (if needed)
- Extra copies of "natural persons" signature/notarization page for property owners not present at meeting, or where they may have to visit a Notary separately
- Extra copies of "representative capacity" signature/notarization page for property owners not present at meeting, or where they may have to visit a Notary separately
- Contact Report
- ROW Invoice
- Agent's notes on parcels, ROW lines, property lines, access, ramps, ingress/egress issues, culvert lengths/sizes, improvements, land offer, timber offer, property owner(s), "also known as" names, heirs, life estates, appointments, contacts, phone numbers, addresses, judgments, liens, unpaid taxes, mortgages, unresolved issues, etc.

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- List of approved clauses (A list of approved deed clauses is included in the attachments to this Chapter of the LPA ROM.)
- Other forms, as appropriate

### 1.5 Arrange Related Files

The Acquisition Agent arranges related files together. Related files include those where either a single property owner owns more than one property or where family, extended family, or business partners are involved. The Acquisition Agent also arranges related files together with similarities regarding leases and other various property interests (for example, Quitclaim interests or 16<sup>th</sup> Section land). When possible, properties with related interests are handled by the same Acquisition Agent.

In the case of related files, Acquisition Agents do not wait to receive appraisals on all related files prior to contacting the property owner. The initial meeting with the property owner may reveal critical ownership, title, lien, and mortgage information as well as the property owner's concerns. With this knowledge, the Acquisition Agent can begin managing these issues to acquire the property in an efficient manner.

### 1.6 Review of Appraisal and Other Acquisition Materials<sup>2</sup>

The Acquisition Agent reviews all material for an informed offer. If relocation is a factor in the acquisition, all materials are reviewed jointly with the Relocation Agent. Involvement of relocation is designated on the Review Appraiser Report. The Acquisition Agent familiarizes themselves with all factors that relate to the acquisition effort. Each factor is listed on the Pre-Acquisition Checklist, provided below.

#### Pre-Acquisition Checklist As Necessary:

- Access controls
- Plans for replacing or moving utilities (water, gas, electric, phone and sewage lines, septic tanks, meters, utility poles, water towers, fire hydrants, water wells, public buildings or facilities)
- Comparable sales and other appraisal data supporting the FMVO.
- Appraised per acre value.
- Location of the property, according to stakes, including distances from existing highway centerline, and distance of current ROW from current highway centerline
- Ingress/egress ramp(s) before and after construction, as shown on ROW Acquisition Map
- Driveway widths allowed after construction and any existing wider driveways
- Number of lanes each direction
- Highway crossover locations on survey map
- Turn lane start and end points
- Location of present ROW markers
- Location of proposed ROW markers
- Signs on the ROW
- Purpose of acquiring the parcel
- Parcel status with LPA Property Management Section. Cleared for acquisition?
- Status of parcel staking. If parcel is not staked, contact the District Coordinator
- Need for the agency to remove fuel tanks
- Property category in appraisal (agricultural, residential, timberland, commercial, etc.)
- Existence of any timber to be acquired.
- Structures or other improvements to be moved.
- Section, Township, Range are correct and match abstract and tax maps
- If parcel is in a city, the city is named in the indexing instructions
- Directions and distances (calls) are correct

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- Hectares and acres are correct
- Access and non-access language in the deed are correct
- Name(s) on deed are correct and match the abstract
- Who must sign the deed and how they must sign their names
- Each partial release instrument is listed or implied in abstract
- Environmental commitments
- Need for any clause(s) in the deed (A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.)
- Need for Resolution and Order to be attached to the deed
- Deeds and ROW Acquisition Maps match

### 1.7 Acquisition Agent and Relocation Agent Site Visit

A visit to the site before an offer may be necessary to familiarize the agents with the project. The Acquisition Agent and Relocation Agent Site Visit ensures that communications with the public about key project deadlines are consistent.

### 1.8 Appraisal Amendments<sup>3</sup>

If information presented by the property owner or a material change in the character or condition of the property indicates the need for a new appraisal, or if the time lapse between the appraisal completion date and date of FMVO is one (1) year or more, a new or amended appraisal must be prepared.<sup>4</sup> If a new or amended appraisal must be prepared, the Acquisition Agent returns the appraisal documents to the Review Appraiser. If the latest appraisal indicates that a change in the FMVO is warranted, the Acquisition Agent promptly updates the FMVO and provides the revised FMVO to the property owner.<sup>5</sup>

### 1.9 Map Revisions

During the life of a project, revisions may be made to maps and deeds to correct inaccuracies, accommodate project/plan changes, identify new land transfers, etc. The revised maps and deeds will be provided throughout the life of the project.

## 2. Acquisition Procedures

### 2.1 Initial Acquisition Agent-Property Owner Contact (Introductory Phone Call)

The Acquisition Agent's initial contact with the property owner(s) or authorized representative(s) is normally a telephone call to schedule an onsite meeting. If the property owner does not have a phone, the Acquisition Agent leaves a note and a business card attached to the property owner's door or mailbox. During this telephone call, the Acquisition Agent covers the following items:

- Explains the purpose of the meeting and informs the property owner(s) or authorized representative(s) that they are an Acquisition Agent and that they would like to meet with them to buy the property (and possibly other improvements). If relocation is involved, the Acquisition Agent explains that a relocation agent also will be assisting in relocation.
- Establishes a meeting time and place (the site of the property being acquired).
- Provides contact information, including an office and cell phone number.
- Verifies the property owner(s)'s full name to ensure the deed instrument(s) is correct.
- Requests that all property owners and spouses are present at the initial on-site meeting. If all property owners are not present, the Acquisition Agent must schedule additional meetings with the other property owners. All parties with an interest in the property (including heirs, estates, powers of attorney, churches, etc.) must be contacted and provided a FMVO, ROW Acquisition Map, *Citizen's Right of Way Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property.

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### 2.2 Property Owner Meeting(s)

Following the initial introductory contact, it is preferred that property owner meetings be held in person. In some situations, communication may be conducted by telephone and/or by mail, if necessary (for example, an out-of-state property owner).

The FMVO may be presented at the initial property owner meeting. Alternatively, more property owner meetings may be required prior to the Acquisition Agent's presentation of the FMVO. The purposes of these additional meetings may be to clear issues, clear title, obtain needed information, etc. Each acquisition is different and the Acquisition Agent adjusts and meets with the property owner as appropriate.

It should be noted that to meet minimum FHWA requirements, the property owner must be provided with an FMVO, the ROW Acquisition Map, and the *Citizen's Right of Way Acquisition Guide*. Please see Section 3 of this Chapter of the LPA Right of Way Operations Manual for additional information on procedures regarding FMVO provision.

If relocation is a factor for the parcel, the Relocation Agent attends the property owner meeting, at which the FMVO is presented by the Acquisition Agent. It is the Acquisition Agent's responsibility to schedule the meeting with the Relocation Agent and property owner. All contact and communication with the property owner and other interested parties is documented (see Section 9.2 of this Chapter of the LPA Right of Way Operations Manual for a discussion of the Contact Report).

During the initial in-person property owner meeting, the Acquisition Agent conducts the following activities:

- Provides *Citizen's Right of Way Acquisition Guide*
- Provides ROW Acquisition Map
- Explains ROW Acquisition Map noting the before and after condition of the property
- Inquires about condition of the Title
- Explains construction features affecting the remainder
- Inquires if there are mortgages, judgments, liens, etc. of which the agent is not aware
- When multiple signatories required, determines who should be listed on the check(s)
- Enters appropriate clauses in the deed(s) (A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.)
- Explains that the payment check will be made payable all property owners, mortgage holders, judgment claimants, lien holders, lis penden claimants, Quitclaim Deed interests, and any spouses who have homestead rights on the property, unless separate checks are requested
- Inquires if there are additional renters or leases. If so, asks for a copy of the lease agreement and sends it to the appropriate supervisor to determine if a Quitclaim Deed is needed
- Informs property owner(s) that the agency must acquire all interests before the deed(s) is accepted, recorded, and paid
- If issues such as out-of-state mortgages occur, the Acquisition Agent consults with the Title personnel to arrange a closing on the property using an approved Title Attorney
- Ensures all pages of any deed or easement are initialed by the property owner(s) and the Acquisition Agent.

### 2.3 Uneconomic Remnants<sup>6</sup>

If the acquisition of a portion of a property leaves the property owner with a remainder that is of little or no value to the property owner, the agency offers to acquire the uneconomic remnant along with the portion of the property needed for the transportation project. The uneconomic remnant is acquired as an uneconomic remnant property [See Survey, Maps &



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Deeds Form Index – Surplus Property Deed]. The agency does not acquire uneconomic remnants through eminent domain. The FMVO for the uneconomic remnant property states that the FMVO legally expires if the property owner does not sign a deed within 30 days after final settlement.

If agreement on the terms for the ROW acquisition cannot be reached, eminent domain proceedings begin for the ROW (See Section 8 of this Chapter of the LPA Right of Way Operations Manual and the Legal Chapter of the LPA Right of Way Operations Manual for additional information on eminent domain proceedings). Property owners should be advised that eminent domain will not include uneconomic remnant property.

### 2.4 Change in Ownership, Judgments, or Liens

If the Acquisition Agent is informed of potential changes in ownership, judgments, liens, etc. through either the property owner or another source, the Acquisition Agent verifies this information according to the procedures below:

- A. Change in Ownership.** If a property owner states that they have sold the property or if the Acquisition Agent obtains other information regarding ownership of the parcel that is inconsistent with the project abstract/deed, the Acquisition Agent verifies that the property is in fact the same as the parcel proposed for right of way acquisition. The Acquisition Agent verifies that the section, township, and range of the properties match. This includes deeds of trust changes.

If property ownership has not changed, the Acquisition Agent clarifies with the property owner the accurate acquisition area. If the property owner states that ownership has changed, the Acquisition Agent sends a memorandum to the Acquisition Supervisor. The Acquisition Supervisor then sends a memorandum to the Title personnel for verification and potentially the preparation of a new abstract.

- B. Change in Judgment or Lien.** If there has been a potential change in a judgment or lien, the Acquisition Agent verifies the change at the Courthouse and obtains a copy of the most recent documentation. The Acquisition Agent then attaches this new documentation to the deed and sends the deed and documentation to the LPA Title Section for updating of the abstract. If the judgment value is greater than that of the acquisition offer, or Internal Revenue Service or state tax liens are involved, the acquisition then goes to condemnation, unless the property owner pays off the judgment. The Acquisition Agent, however, does not wait for documentation of the potential change to obtain signatures on deeds. The Acquisition Agent may request that the property owner sign the deed before pursuing verification of the potential change at the Courthouse.

If the property owner states that the mortgage is paid in full or cancelled, but the abstract lists a mortgage or lien holder, the Acquisition Agent obtains a copy of the cancellation at the Courthouse as documentation. Once this documentation is obtained the lien holder's name is not required on the check. Alternatively, the Acquisition Agent may request the property owner to provide a copy of the "Authority to Cancel" or a Deed of Trust with "Cancellation" stamped on it from the Chancery Clerks office. The Acquisition Agent also may review the "Authority to Cancel" books and the Deed of Trust books at the Chancery Clerks office to obtain a copy of a canceled mortgage. The cancellation is recorded in the "Authority to Cancel" book and the original Deed of Trust is stamped satisfied and canceled.

- C. Dissolved Corporation.** Since acquisitions involving dissolved corporations are rare occurrences, the Acquisition Agent seeks guidance from the LPA Title Section. If a property is listed as owned by a corporation, and the property owner claims the corporation is dissolved, the corporation must have been formally dissolved by a meeting

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of the board, a Resolution and Order, and then formally recorded and dissolved by the Office of Secretary of State. If the owner of a corporation dies, the corporation is not automatically dissolved. The corporation's assets must have been properly distributed. If land was distributed by deed, it must be recorded at the County Chancery Clerk's office.

**D. Bankruptcy, Federal Tax Liens, State Tax Liens.** If a property is in bankruptcy or has federal or state tax liens, the Acquisition Agent consults with the Acquisition Supervisor and Title Officer for the appropriate acquisition procedures.

### 2.5 Deed Clauses

The LPA Legal personnel maintain a list of approved standard deed clauses as well as alternate deed clauses for use when a property owner objects to a standard clause. A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.

The Acquisition Agent determines before, or at, the initial contact meeting if deed clauses are needed. If it is unclear whether a deed clause is needed, the Acquisition Agent contacts the Acquisition Supervisor for direction. If it is clear at the initial meeting which deed clause is needed, the Acquisition Agent includes the clause on deed and explains it to property owner, prior to asking them to sign deed.

Prior to replacing a standard deed clause with an alternate deed clause, the Acquisition Agent obtains approval from the Acquisition Supervisor. The LPA must approve any change in the wording of a standard, or an alternate, deed clause on a case-by-case basis. Insertion of unapproved deed clauses, or unapproved changes to deed wording, by the property owner are not accepted by the LPA. Only clauses that are pre-approved by the LPA, and written exactly from the LPA list of approved clauses, can be inserted in the deed.

The property owner and Acquisition Agent must initial all changes on deeds.

### 2.6 Homestead Rights

On property that is defined as the homestead, the spouse of the property owner also must sign all deeds and instruments.

### 2.7 Heir Searches

The Acquisition Agent conducts an heir search when the property owner shown in the abstract is deceased. Upon receiving notification to provide heir information, the Acquisition Agent takes the following actions:

- Assembles all known heir information.
- Searches the following potential sources of heir information, as applicable: current property owner(s), relatives, neighbors, attorneys, MDOT and county ROW records, banks, real estate offices, US Post Office, county courthouse records (wills, deeds, marriage, divorce), State Department of Health records (birth, death certificates), churches, funeral homes, cemetery records, schools, census, etc.
- Requests heir information in writing [see Acquisition Forms Index - Identification of Heirs Letter] and requests information providers to complete and sign the Record of Heirs Form
- Obtains copies of deeds, wills, birth certificates, death certificates, and other documents or records.
- Submits information and documentation to the Title personnel for verification and approval. The Title personnel determine whether to recommend the parcel for condemnation or continue acquisition.

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- If a property owner has Power of Attorney (POA), obtains documentation of POA recorded in the county where the title is recorded and requests that the Title personnel review the POA documentation to ensure the POA has the authority to transfer land.

If a person is the sole survivor of a family with no will, or a gap in the trail of deeds and/or wills exists, the Acquisition Agent consults with the Title personnel on how to proceed with the acquisition. The “sole survivor-at-law” deed clause may be needed. A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.

### **2.8 Deceased Owner, Survived by Partner**

If a spouse is deceased, and “joint tenant with rights of survivorship” is noted on the abstract, the Acquisition Agent proceeds with following actions:

- Requests that the surviving spouse sign the deed;
- Obtains proof of death (death certificate, obituary, or funeral statement from courthouse); and
- Obtains a copy of the will or completes a Record of Heirs Form

### **2.9 Obtain Releases to Encumbrances (or Interests) to the Title**

The Acquisition Agent must obtain releases to encumbrances (or interests) to the title prior to payment of the property owner. These encumbrances may include mortgages, judgments, liens, etc. Note that it is not necessary to pursue partial release(s) once a parcel is recommended for condemnation.

The process of obtaining executed Partial Release of Mortgages must be initiated early in the acquisition process. Acquisition Agents must ask the property owner(s) if they have any liens and/or encumbrances against their property. The Acquisition Agent also must review files to determine the status of mortgages (still in effect or cancelled). Since the property owner’s warrant must include the financial institution holding the Deed of Trust, it is imperative that the most current and correct financial institutions are included on the warrant. It also is imperative that the most current and correct Deeds of Trust are listed on the executed Partial Release of Mortgage instruments.

If there are encumbrances to the title, the Acquisition Agent must obtain a satisfied Deed of Trust or a release from the Chancery Clerk’s office. Alternatively, the lien holder can opt to waive payment. The lien holder must provide a written statement if they opt to waive payment [see Acquisition Forms Index - Lien Holder Waiver of Payment]. If the property owner indicates that the mortgage is paid in full, but the mortgage was not properly satisfied at the Chancery Clerk’s office, the Acquisition Agent contacts the mortgage holder and requests that the mortgage be cancelled at the Courthouse. Acquisition Agents also must resolve inaccurate judgments or liens (for example, property owners with common names).

The steps to obtaining releases include the following:

1. Report the existence of a new mortgage via a memorandum to the Acquisition Supervisor and attach a copy of the discovered Deed of Trust and/or cancelled mortgage(s).
2. If the acquisition of a portion of a property leaves the property owner with an uneconomic remnant and the property owner wishes to sell the uneconomic remnant, the X-Deed used to acquire that remnant also requires a partial release for that acreage. The Acquisition Agent requests that an X-Deed Partial Release is created prior to requesting the Partial Release of Mortgage from the financial institution.
3. Obtain all phone numbers, names of contact persons, and addresses for financial institutions involved. This information is maintained and updated in each Acquisition

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Agent's electronic miscellaneous field file. This information is shared among all Acquisition Agents. Obtaining this information prevents delays once the deed is signed.

4. Contact mortgage bank in person, if possible, and provide written request for partial release [see Acquisition Forms Index - Partial Release Request Letter]. Some banks may have an Officer assigned to handle Partial Release of Mortgages, rather than the Loan Officer that manages the property or customer account. Obtain Partial Release of Mortgage from the assigned Partial Release Officer or the Loan Officer, as appropriate.
5. When Partial Release of Mortgage(s) is obtained, submit Partial Release of Mortgage(s) to the agency along with all signed deeds.
6. Check the abstract to verify that the agency has received all executed partial releases on the project.
7. If the mortgage company is unwilling to sign a Partial Release of Mortgage prior to receiving compensation, inform the Acquisition Supervisor. The Acquisition Supervisor, in consultation with the LPA Title Section, decides whether to process the parcel for payment through an Agent Closing, Attorney Closing, or to recommend the parcel for condemnation.
8. If it is decided to process the parcel for payment through an Attorney Closing, the Title Officer arranges a closing with an approved Title Attorney. The Title Officer notifies the Acquisition Supervisor that the closing will be held via an approved Title Attorney.
9. If it is decided to recommend the parcel for condemnation, the Acquisition Supervisor instructs the Acquisition Agent to complete a Recommendation for Condemnation Form.

If a mortgage holder requires the agency to pay a fee to obtain an executed Partial Release of Mortgage, the Acquisition Agent takes the following actions:

1. Obtain decision from Acquisition Supervisor on whether the agency will pay fee.
2. If agency will pay the fee:
  - a. If the property owner is required by the mortgage holder to complete and sign a form, request that the mortgage holder send the form to the property owner immediately.
  - b. Ask the property owner to complete any forms required by the mortgage holder, return forms to the mortgage holder, and send a copy of each form to Acquisition Agent.
  - c. Request that mortgage holder submit an invoice and a signed W-9 Form to the Acquisition Supervisor to begin processing the fee payment check.
  - d. Provide a sample invoice for the mortgage holder to use, if they do not have one.
  - e. Acquisition Supervisor obtains fee payment check, requests an original signed Partial Release of Mortgage.
  - f. Acquisition Agent coordinates and tracks the delivery or mailing of the fee payment check to the mortgage holder.
3. If agency will not pay fee, inform mortgage holder and ask for the Partial Release of Mortgage.

### 3. Fair Market Value Offer (FMVO)

#### 3.1 Provision of FMVO

The property owner(s), or authorized representative(s), are provided a written FMVO. In some cases, the Acquisition Agent may choose to present the written FMVO at their first meeting with the property owner while, in other cases, the Acquisition Agent may choose to

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present the written FMVO at a later meeting. For example, the Acquisition Agent may prefer to wait until issues on other parcels are resolved, until the title is cleared, a relationship with the property owner is established, or more information on the parcel is needed.

When purchasing property, all parties with an interest in the property must be contacted and provided a written FMVO, ROW Acquisition Map, *Citizen's ROW Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property. Parties with an interest in the property may include heirs, estates, powers of attorney, and churches, among others. The property owner(s) can have a designated representative (if approved by all property owners) but each property owner and interested party must receive a written FMVO, ROW Acquisition Map, *Citizen's ROW Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property, either in person or by mail. It is best to have all property owners present when presenting the written FMVO.

If at all possible, presentation of the written FMVO is made in person. Please refer to Section 1 of this Chapter of the LPA Right of Way Operations Manual for guidelines related to meeting with property owners. The Acquisition Agent presents the property owner(s) the following documents at the FMVO meetings:<sup>7</sup>

1. *Citizen's Right of Way Acquisition Guide* (may have been provided at earlier meetings)
2. ROW Acquisition Map, with the parcel to be acquired highlighted (may have been provided at earlier meetings)
3. Internal Revenue Service W-9 form
4. Minority Vendor Self Certification Form [see Acquisition Forms Index – Minority Vendor Self Certification Form]
5. An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, identify any separately held ownership interest in the property, (a tenant-owned improvement) and indicate that such interest is not covered by the FMVO. (may have been provided at earlier meetings)
6. FMVO. Sign and date the written FMVO, in the property owner(s) presence. The date is that of the original FMVO presentation. If all of the property owners are not present at the initial FMVO meeting, when re-presenting the written FMVO later to the other property owners, present a copy of the written FMVO only, and write "COPY NO. 1" on the copy.
7. Proposed instrument(s) of conveyance (such as, deed(s)). Ask property owner(s) to sign and execute the instrument(s). Date the deed using the date that the last person signed the deed
8. Partial Release(s) of Mortgage(s).

If the written FMVO cannot be provided in person, the written FMVO is provided via mail. The Acquisition Agent informs the property owner(s) that the documents are being mailed, that they need to sign and notarize the documents, and return them by a specified date. The written FMVO mailing includes the documents listed above as well as a cover letter and a W-9 for each property owner. If sent via certified mail, the Acquisition Agent retains the original receipt for certified mail and the certified mail receiving notice in the parcel file for submission with closing papers.

If the property is being acquired from an heir, the Acquisition Agent must state, along with the written FMVO that the recipient has identified themselves as an heir to the property owner.

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Some corporate property owners also may request the Market Data Comparison Report, CAD Maps, and environmental documents in conjunction with the written FMVO.

### 3.2 Joint Acquisition and Relocation Offer Policy<sup>8</sup>

A displace must receive a notice of eligibility that informs them that they will be displaced and may be eligible for relocation benefits. This notice should be issued on the same day, or as soon thereafter as possible, as the provision of the FMVO or other offer of just compensation. If delivery on the same day is not possible, the notice of relocation eligibility is typically delivered within seven (7) days.

Where feasible, the LPA provides the acquisition FMVO and relocation offer letter at the same time. If the property is only occupied by a tenant, the FMVO and relocation offer are provided separately. If the offers cannot be made at the same time, the Acquisition Agent notifies the LPA Relocation Section promptly of the provision of the FMVO.

### 3.3 Waiver Valuation Acquisitions<sup>9</sup>

The LPA may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at low value, based on a review of available data.<sup>10</sup> Low value is defined as not exceeding \$10,000.<sup>11</sup> In these cases, the Acquisition Agent sets a value based on a review of three (3) comparable sales provided by the LPA Appraisal Section for each parcel identified to meet Waiver Valuation. A Waiver Valuation acts as the offer of just compensation. The acquisition by Waiver Valuation is assigned to an Acquisition Agent for immediate provision to the property owner. When the Acquisition Agent provides a Waiver Valuation offer of just compensation, the property owner is advised of their rights to an appraisal.

- **Identifying Parcels for Waiver Valuation.** Parcels may be selected for Waiver Valuation if the parcel is a land only acquisition with no improvements and no damages are assessed to the remainder. The Review Appraiser will provide three (3) comparable sales for each parcel identified to meet Waiver Valuation. During project kickoff, the Acquisition Agent will use this information to make a determination that the most comparable sale is not exceeding \$10,000.<sup>12</sup> During the project kickoff phase, the Acquisition Agent previews all parcels to be acquired and identifies those acquisitions that do not exceed the low value amount.

If a Federal Agency is funding the project, then it may approve to exceed the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph.<sup>13</sup>

- **Documenting Waiver Valuations.** Based on the three (3) comparable sales provided for each identified parcel, the Acquisition Agent establishes a value for each parcel that qualifies as a Waiver Valuation. The Acquisition Agent prepares a Waiver Valuation Form for each parcel that serves as documentation to present an offer of just compensation for the acquisition of these properties. The Acquisition Agent distributes the Waiver Valuation Form to the Acquisition personnel and the Relocation personnel, if applicable.
- **Appraisal Waiver.** A property owner, that is being offered just compensation via a Waiver Valuation, must waive their right to an appraisal by signing the Appraisal Waiver Form. If the property owner does not waive this right, the parcel is appraised via either a Short Form Valuation Appraisal or a Narrative Appraisal Report, as appropriate. The resulting FMVO is then based on the appraisal.

### 3.4 Donations of Property

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The owner of real property, required for a project, may donate the property to the agency. Prior to the agency accepting the property donation, the property owner is informed of their right to receive just compensation for the property. The property owner also is informed of their right to an appraisal of the property, unless the agency's policy does not require an appraisal for that type of property.<sup>14</sup> If an appraisal is declined, the property owner signs an Appraisal Waiver Form.

If a property owner donates their real property, the Donation Clause is either inserted in the deed or incorporated into a separate notarized agreement (A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual). It is necessary to obtain the partial release of mortgage and other required releases. A property owner also may donate their property without waiving their right to an appraisal.<sup>15</sup>

### **3.5 Agent Follow-up on Offer<sup>16</sup>**

Once the FMVO is provided to the property owner, the Acquisition Agent makes a follow-up call to the property owner within a reasonable period of time.

### **3.6 No Oral Agreements**

Acquisition Agents are prohibited from making oral agreements. All agreements with property owners and other interested parties must be made in writing.

### **3.7 Exceptions to What Acquisition Includes**

Fee acquisitions include all rights, title, and interests in and to the property being acquired, except the following:

1. All oil and gas therein and there under on all projects where the property is being acquired under statutory authority, Section 65-1-47, Mississippi Code 1972 Annotated and Amended.
2. Other rights, titles, or interests which are specifically reserved in the deed, condemnation petition, judgment, or stipulation settling a condemnation proceedings.

## **4. Special Acquisition Circumstances**

### **4.1 Mobile Home Acquisition Procedure**

The Acquisition Agent obtains a determination from the approved appraisal regarding whether the mobile home is real property or personal property, if not so identified the Review Appraiser is notified to assist in the determination. In most instances, if the mobile home is personal property, the mobile home is relocated to a new lot by the Relocation Agent. If the mobile home is real property, the Acquisition Agent acquires it and compensates the property owner in the FMVO. In those instances when a mobile home cannot be relocated to similar conditions, zoning, etc., the Relocation Agent requests of the Review Appraiser, in writing, that the mobile home be acquired.

If the Acquisition Agent acquires the mobile home, the Acquisition Agent conducts the following activities:

- Adds the Mobile Home Clause to the deed with the mobile home's serial number, make, and model. The Acquisition Agent and the property owner(s) initial the clause. A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.
- Obtains the original bill of sale from the mobile home owner and attaches the bill of sale to the signed deed.

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- Prepares a bill of sale for the property owner(s) to sign and date. This bill of sale must be notarized.
- Coordinates with the Title personnel to check for any Uniform Commercial Code (UCC) liens that prevent passing of clear title to the agency.

When acquiring a mobile home that is owned by one (1) party, but is on a different property owner's land, and the mobile home is mortgaged, the Acquisition Agent ensures that the following items are placed in the Parcel File:

1. Property owner's Warranty Deed
2. Mobile home owner's Quitclaim Deed with Mobile Home Clause inserted.
3. Partial Release of Mortgage.
4. Uniform Commercial Code 3 (UCC-3) release from mortgage company.
5. Notarized Bill of Sale from mobile home owner.
6. Mobile home title from the mortgage company. The mortgage company typically sends the title to the mobile home owner. MDOT then obtains the signed title from the mobile home owner. If the title is not available, a Bill of Sale is sufficient. In most cases, only newer mobile homes have a title or certificate of origin."
7. US Department of Housing and Urban Development (HUD) Form signed by the property owner.

### 4.2 Shared Acquisition Payment<sup>17</sup>

If more than one party is sharing the acquisition payment, the percentage of the payment that goes to each individual is stated in the deed as a Disbursement Clause. A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.

### 4.3 Crop Agreements

This section describes the potential situations that may occur when an acquisition project includes land with existing, growing crops. In all cases, the Acquisition Agent provides all crop agreements to the LPA Property Management Section as notification of the agreement.

**Harvest Prior to Letting.** If agreed to by the agency, the property owner can harvest existing, growing crops after the agency acquires the property, but before project construction. Approval for the harvest completion date is obtained from the Acquisition Supervisor to ensure harvesting does not interfere with project letting. The Acquisition Agent provides the property owner with the deadline for harvesting as a Crop Clause in the deed or by a signed memorandum from agency authorities (A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual). After the agreed upon harvest completion date, any unharvested crops become the property of the agency. Agency employees must not suggest that a property owner abandon a growing crop prior to ROW deed conveyance. Until this date, the property owner should never abandon a growing crop.

**Unable to Harvest Prior to Letting.** If the project is let prior to harvesting the current crop and the property owner is unable to harvest the crop by the agreed upon deadline, an estimate of the damages is prepared either by a Review Appraiser's determination, a revised appraisal, or an administrative adjustment as determined by the Acquisition Supervisor.

**Agency or Contractors Cause Damage to Crops.** If damage to crops is caused by the agency's survey crews, contractors, etc, prior to the agreed upon deadline, damages to crops are compensated for via an administrative adjustment, a Review Appraiser's determination,



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or a revised appraisal as determined by the Acquisition Supervisor and the Review Appraiser. The deed is adjusted accordingly.

**Utility Relocation Requires Access/Potential Crop Damage.** Relocation of utilities in the pre-construction phase may require access that could damage a growing crop. The utility company, however, must access the property to relocate the utility in time for project letting. In these instances the utility company determines the damages in coordination with the owner of the crops and establishes damages prior to initiating the relocation. The damages are provided to the crop grower by the utility company.

**Potentially Contaminated or Other Environmentally-Sensitive Sites.** Farming operations also may contain potentially contaminated sites or other environmentally-sensitive areas. If a Field Agent discovers a potentially contaminated site(s) or other environmentally sensitive area, not already identified by the Property Management personnel, the Field Agent reports the site(s) to their supervisor and the Property Management personnel. Once reported, the acquisition process is discontinued until a determination is made.

**Farmer Plants Crop After Signing the Deed.** If the farmer plants a crop on the right of way after signing the deed, this is done so at the farmer's risk.

### 4.4 Timber Agreements

If the timber is a separate item on the appraisal (that is, it is part of timberland, not timber on residential land), the property owner may elect to harvest the timber. If the property owner elects to harvest the timber, the Acquisition Agent subtracts the value of the timber from the total FMVO. The deed must contain a Timber Clause with a clear deadline for timber removal (A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual). The Acquisition Agent obtains approval for the harvest completion date from the District Coordinator to ensure harvesting does not interfere with project letting. The Acquisition Agent provides all timber agreements to the Property Management personnel to ensure they are notified of the agreement.

### 4.5 Life Estate Interests

In some instances, a life estate owner's deed states that they have interests in timber on the property, any rent resulting from the property, or other income producing features of the property. The life estate interest also usually has the right to live on the homestead until their death. In these cases, the fee owner may be compensated through a Warranty Deed for the value of the land and the life estate owner may be compensated through a Quitclaim Deed for the value of timber, rent, etc.

### 4.6 Fence Relocation

If there are fences to be compensated for within the acquisition area on the parcel being acquired, and the property owner wishes to keep the fence, the agency and the property owner may agree in writing that the property owner may remove the fence from the acquired property. The Acquisition Agent obtains approval for the fence removal date and clause from the Acquisition Supervisor to ensure the fence does not interfere with project letting. The deadline for the removal of the fence must be stated in a Fence Clause in the Deed. If the fence is not removed within that timeframe, the construction contractor demolishes the fence. A list of approved deed clauses is included in the attachments to this Chapter of the LPA Right of Way Operations Manual.

If the fence is appraised as an improvement, the Acquisition Agent notifies the Property Management personnel to ensure they are aware of the acquisition of the fence.

### 4.7 Billboard and Sign Acquisitions<sup>18</sup>

The location of a billboard/sign is obtained from the topo information on the ROW Acquisition Map. The appraisal determines if the billboard/sign is on present right of way or private land.

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When a billboard or sign is acquired by the agency, the LPA Acquisition Section, in conjunction with the LPA Relocation Section, notifies the Property Management personnel. A sign/billboard also may be relocated depending on the condition of the sign, remaining land, length of lease, and zoning.

### **4.8 Acquiring Part of an Improvement that Is Partly on the Remainder Property**

In some instances, improvements span both the acquisition property and the remaining property. If an improvement spans both the acquisition property and the remaining property, or is in close proximity to the remaining property, the Property Management personnel provides the Acquisition personnel with a determination as to whether the Ingress-Egress Clause must be entered into the Warranty Deed. The Ingress-Egress Clause authorizes the agency to remove or demolish the portion of the improvement on the remaining property and/or to ingress the remaining property to perform the work. A list of approved deed clauses is included in the attachments to this Chapter of the ROM.

### **4.9 Acquisition from Political or Public Corporation**

If the property owner is a political or public corporation (municipality, county, etc), the Acquisition Agent ensures that the seal of the corporation is attached to the instrument and is attested to by the secretary or clerk of such corporation.<sup>19</sup> The seal and the attest must be part of the actual instrument. It is not sufficient for the seal and the attest to be only on the Resolution and Order or minutes.

### **4.10 Acquisition of Lands Under Control of Another State Agency**

An agency occasionally acquires land from other state agencies. The method for acquiring this land is determined by the type of ownership that the state agency has of the property. If there are no restrictions on the agency passing the title, the agency will acquire the property through a Warranty Deed. If this is not possible, the property is acquired through a permanent easement.

### **4.11 Grave Relocation**

If a grave must be relocated in the acquisition process, a court order is required. The agency provides counsel to handle the legal process of the grave relocation. A ROW Agent (typically a Relocation or Acquisition Agent) provides counsel with the names of any relatives of the buried deceased, name of the deceased, contact information for the funeral home conducting the relocation, and the new location of the grave. If relatives exist, the relatives may decide where to relocate the grave. If no relatives exist, the courts determine where to relocate the grave. The ROW Agent also obtains quotes for the relocation costs from two (2) to three (3) funeral homes for the relocation services and provides this information to the attorney. Once the Court Order is obtained, the funeral director conducts the relocation and invoices the ROW Division for the cost of the relocation services.

## **5. Easements**

An easement is the right to the limited use by the agency in the land of a property owner. An easement is a nonpossessory and intangible interest. The agency may require either temporary or permanent easements.

### **5.1 Temporary Easements**

The agency's policy is to require Temporary Easements on property surrounding the parcel site such as for ramps, culverts, and ponds. All other construction-related activities such as detour roads, sloping and grading, etc. must be acquired under a Warranty Deed.

### **5.2 Permanent Easements**

In some cases, the agency acquires the property through a Permanent Easement. When obtaining a Permanent Easement on property, the procedures followed by the Acquisition

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Agent are similar to those followed when acquiring property through a deed. The procedures specific to Permanent Easements are described below.

### **A. Federal Agency Permanent Easements**

Agencies cannot exercise eminent domain over any Federal/United States Government Agency or Reservations for Native Americans (which are under the umbrella of the United States Department of Interior, Bureau of Indian Affairs). Government Agencies from which agencies frequently acquires property via Permanent Easement include the following:

- United States Department of Interior, Bureau of Indian Affairs (Reservations for Native Americans)
- Federal Highway Administration
- Army Corps of Engineers (thru FHWA)
- United States Department of Agriculture, Forest Service (thru FHWA)
- Drainage District Boards (thru FHWA)
- Levee Boards (thru FHWA)
- 16 Section Lands – County Board of Education (thru FHWA)
- Army or Air Force
- Navy
- Veterans Administration
- NASA

When obtaining an easement on property owned by a Federal Agency, the Acquisition Agent provides the Agency with a cover letter that states the location and number of acres and requests their signature on the Permanent Easement. Attached to the letter are a ROW Acquisition Map, the FMVO, and the Permanent Easement. The Acquisition Agent contacts the Agency to ensure that they sign and return the Permanent Easement. After the Acquisition Agent receives the executed Permanent Easement, the Acquisition Agent arranges for the easement to be approved. Upon approval, the Acquisition Agent processes payment.

The Title personnel determines if a property is owned by a Native American Tribe. When obtaining an easement on property owned by a Native American Tribe, the Acquisition Agent provides the Tribe with a cover letter that states the location and number of acres involved and requests their signature on the Permanent Easement. Attached to the letter are a ROW Acquisition Map, the FMVO, and the Permanent Easement. The Acquisition Agent contacts the Tribe to ensure that they sign and return the Permanent Easement. After the Acquisition Agent receives the executed Permanent Easement, the Acquisition Agent arranges for the easement to be approved. Upon approval, the Acquisition Agent processes payment.

It is important to note that Native Americans who live on the Reservation do not own the land on which their house sits. The Reservation's Housing Authority owns all of the land and the residents pay "rent" to Housing Authority for the land on which their house sits. Residents of the Reservation, however, may own their house. As a result, when obtaining easements on Reservation property, the agency provides just compensation to the Reservation and, in turn, the Reservation provides residents, who own their homes, compensation for the house. When acquiring property on a Reservation, the Reservation also may donate the land to the agency. In these instances, the agency may agree to allow the Reservation to remove any timber on the land prior to the donation.

### **B. Railroad Company Permanent Easements**

When obtaining an easement on property owned by a railroad company, the Acquisition Agent provides the railroad company with a cover letter stating the location and number of acres involved in requesting their signature on the Permanent Easement. Attached to the letter are three (3) ROW Acquisition Maps, three (3) construction sheets, three (3) cross

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sections showing the subject property and the railroad, the FMVO, and three (3) Permanent Easements. If the easement is on more than one (1) acre, an appraisal is completed. If an easement is on less than one (1) acre, just compensation is determined through an administrative adjustment. If the Railroad is abandoned, the property can be acquired via a Quitclaim Deed. The Acquisition Agent contacts the Railroad to ensure that they sign and return the Permanent Easement. After the Acquisition Agent receives the executed Permanent Easement from the Railroad, the Acquisition Agent arranges for the easement to be approved. Upon approval, the Acquisition Agent processes payment.

Railroads from which agencies frequently obtain easements on property include the following:

### **Class I, Major**

- Illinois Central
- KCS Eastern Division
- Norfolk Southern
- Burlington Northern
- CSX Transportation

### **Class II and III, Regional and Local**

- Columbus and Greenville
- Mississippi Delta
- Mississippi Central
- Mississippi Export
- Redmont
- Great River
- Gloster Southern (Marion County Railroad Authority)
- Mississippian
- Mississippi and Skuna Valley
- Meridian and Bigbee
- Gloster Southern (Georgia Pacific)
- Port Bienville
- Golden Triangle
- Pearl River Valley
- Old Augusta
- Plum Creek South Central Timberlands

## **6. Acquisition Issue Resolution Procedures**

### **6.1 Addressing Property Owner Concerns**

ROW Agents respond to property owner questions promptly. If the Agent cannot answer the property owner's question, the Agent raises the question with appropriate agency personnel. The Agent documents all questions in the Contact Report. The agent assures the property owner that their question will be answered promptly and specifies an approximate timeframe for response. Agents ensure that property owner questions are fully addressed. Outstanding property owner concerns or questions may prevent or delay property acquisition. The property owner must be given the opportunity to present evidence, including but not limited to, comparable sales data and appraisals that is contrary to the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations.

### **6.2 Irrigation System Concerns**

Irrigation systems on cropland properties may be affected by construction projects. The farmer and/or property owner determines the effects of construction on the irrigated land, well, and/or pivot system. The Acquisition Agent, at the property owner's request can request a survey through the District Coordinator and a center pivot radius to determine the construction project's effect on the irrigated land, well, or pivot system. The survey and center pivot radius determine whether the project will negatively affect the crop and, if so, the amount of acreage and irrigation area that will be affected. Upon making the survey request, the Review Appraiser is notified as any irrigated crop land vs. non crop land could require and appraisal update.

If the well-head for the irrigation system is within the acquisition area, then the system is appraised and acquired via cost to cure. Upon acquisition of a well-head, the LPA

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Acquisition Section notifies the Property Management personnel. The Property Management personnel are responsible for closing the well, as necessary. If the well-head is not within the acquisition area, then the irrigation system may be relocated and the Appraiser notifies the Relocation Agent.

### 6.3 Exchange for “Consideration” Concerns

In some cases a property owner may refuse to sign the deed(s) because it states they have received ‘consideration’ (i.e., payment), when in fact payment is made only after all deeds to the parcel have been recorded. In these cases, the Acquisition Agent must obtain approval from the Acquisition Officer to request that the property owner submit a copy of the signed deed and enable the property owner’s legal representative to retain the original deed until the payment is received. Once the property owner has received payment, the Acquisition Agent obtains the original, executed deed. Another ROW Agent delivers the payment and retrieves the original, signed deed.

### 6.4 Construction and Survey Issues and Concerns

If construction and survey issues or concerns are raised by the property owner, the ROW Agent may go to the District Coordinator to request that a District staff person meet with the Acquisition Agent and the property owner at the property to explain construction or survey issues and answer questions.

### 6.5 Ramp Change Requests

If a property owner requests a ramp change, the Acquisition Agent contacts the District Coordinator about the requested ramp change. The District Coordinator discusses the ramp change with the Project Engineer. Roadway Design and the Project Engineer together make a decision regarding the ramp change. The District Coordinator provides this decision to the Acquisition Agent and copies the Project Engineer. For the change to be finalized, the LPA Roadway Design Division provides the LPA ROW Division with an official design change. The decision notes the location of the ramp identified by file number and station number. Based on the final LPA Roadway Design Division plan revision, the Acquisition Agent drafts a memorandum to the property owner. The Acquisition Agent marks the ROW Acquisition Map indicating the proposed change. The memorandum is signed by the Project Engineer and provided, with the marked ROW Acquisition Map, to the property owner, the LPA ROW Surveys, Maps & Deeds Section, and the LPA Appraisal Section.

### 6.6 Property Owner Acquisition Review Request

The property owner, or other interested party, may request a review of the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations. Each review process is described below.

#### A. Title Transfer and/or Litigation Expenses

The owner of the real property is reimbursed for all reasonable expenses the property owner necessarily incurred for:<sup>20</sup>

1. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency. However, the agency is not required to pay costs solely required to perfect the owner’s title to the real property; and
2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
3. The pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

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Whenever feasible, the agency pays these costs directly so that the owner does not have to pay such costs and then seek reimbursement from the agency.

The owner of the real property also is reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner incurred because of a condemnation proceeding, if:<sup>21</sup>

1. Final judgment of the court is that the agency cannot acquire the real property by condemnation; or
2. Condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or
3. Court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the agency effects a settlement of such proceeding.

### B. Fair Market Value

When property owners dispute the FMVO monetary amount, the Acquisition Agent asks the property owner why they think the property is worth more. If appropriate, the Acquisition Agent submits this information to the Review Appraiser for consideration. The Review Appraiser provides the Acquisition Agent with a determination of whether the appeal is valid. If the appeal is valid, the appraisal may be revised and a copy of the revised appraisal is sent to Acquisition Agent. The property owner must be given the opportunity to present evidence that is contrary to the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations.

If a property owner provides a privately obtained appraisal to the Acquisition Agent for consideration, the Acquisition Agent takes the following actions:

1. Sends privately obtained appraisal via memorandum to the Review Appraiser
2. Sends a copy of transmittal memorandum to the Acquisition Supervisor.
3. Does not make copies of the privately obtained appraisal, this is a proprietary document.
4. When the appraisal is returned from the Review Appraiser, the Acquisition Agent returns the private appraisal to the property owner in person and in original condition
5. Provides the property owner with a verbal explanation of the LPA's findings and status of the decision.

After the FMVO is presented to the property owner, agency Appraisers (assigned to the project or otherwise), do not discuss the appraisal nor the appraisal process with the property owner. Acquisition Agents contact only Review Appraisers or the Acquisition Supervisor to convey property owner requests or concerns concerning appraisals. Acquisition Agents receive appraisal information from Review Appraisers only. Acquisition Agents do not discuss appraisals with the Appraiser who performed the appraisal.

### C. Administrative Adjustment Request<sup>22</sup>

Administrative adjustments are used as an alternative to judicial resolution of a difference of opinion on the value of a property or the terms and conditions of the acquisition process or highway design to avoid unnecessary litigation and congestion in the courts.<sup>23</sup> All administrative adjustments are associated with a unique property feature and justified.

An Acquisition Agent may not make an offer in excess of the FMVO based on an administrative adjustment unless specifically authorized by the Acquisition/Relocation Officer. The following is the process by which an administrative adjustment may be made:

1. Following the failure of reasonable efforts to come to an agreement with the property owner, the Acquisition Agent prepares a memorandum presenting the property owner's

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compensation or acquisition issue with the written justification to the Acquisition Supervisor.

2. Acquisition Supervisor may authorize or request approval of an administrative adjustment if the settlement is reasonable, prudent, and in the public interest.
3. After determination of the administrative adjustment amount, the Acquisition Supervisor contacts the Acquisition and Relocation Officer who obtains the determination of the Assistant Division Administrator.
4. Upon approval or denial, the Acquisition Agent is notified.
5. The approval or denial of the administrative adjustment is documented in the contact record. The Acquisition Agent then contacts property owner, obtains execution of the instruments, and sends the invoice for signing by the Division Administrator.
6. Division Administrator signs the invoice, approving the administrative adjustment.
7. Administrative adjustment amounts are not added to an FMVO. The FMVO matches the appraisal amount and the invoice matches the deed amount.

### **D. ROW Consideration Request**

In some cases, the agency agrees to a right of way consideration, such as a driveway or frontage road access to finalize the acquisition. An agreement for such a consideration between the property owner and the agency must be documented in writing.

In the case of most driveways or ramps, if the Acquisition Agent is informed by the property owner that such a consideration would enable finalization of the acquisition, the Acquisition Agent takes the property owner's request directly to the District Coordinator and the Project Engineer. The District Coordinator then obtains the approval of the Project Engineer and the District Engineer, documents the agreement, and conveys the terms of the agreement to the property owner in coordination with the Acquisition Agent.

In the case of a frontage road, approval by the Acquisition Supervisor is required prior to providing the request to the District Coordinator. If the Acquisition Supervisor approves the request, the Acquisition Agent provides that written approval to the District Coordinator. The District Coordinator then obtains the approval of the Project Engineer and the District Engineer, documents the agreement, and conveys the terms of the agreement to the property owner in coordination with the Acquisition Agent.

## **7. Acquisition Acceptance and Closing**

For additional property closing procedures and detail, please refer to the Property Closing Chapter of the LPA Right of Way Operations Manual.

### **7.1 Acceptance of FMVO or Waiver Valuation**

When the property owner accepts the FMVO or Waiver Valuation, the Acquisition Agent conducts the following activities with the property owner:

- Ask if name on the deed(s) is exactly correct.
- Ask for correct address to enter on the deed(s) and Internal Revenue Service W-9 Form(s).
- Request to see each property owner's social security number identification.
- If future address is not yet known, or available, remind the property owner to establish forwarding address at the US Postal Service when the future address is known.
- Execute and properly notarize the deed(s)

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- Where it is advantageous to the property owner, suggest that a witness be present for deed execution.
- If property ownership includes any life estate interests, the deed(s) requires signatures of all parties who have an interest to convey the property.
- If the property owners have homestead rights, both partners must sign the deed(s). A Power of Attorney signature is not acceptable on homestead property.
- If there are multiple property owners, and the property owners request separate checks, separate checks can be issued. An Internal Revenue Service W-9 form and invoice are created for each property owner.
- Complete Internal Revenue Service W-9 Forms for all individual(s) listed on the check(s). Enter each individual's name on the Internal Revenue Service W-9 Form exactly as it appears on the deed. If possible, the Internal Revenue Service W-9 Form should have the same address as the address on the deed. If this is not possible, the Internal Revenue Service W-9 Form must indicate the address where the payment is to be made. The address on the invoice must match the address on the Internal Revenue Service W-9 Form. Ask the property owner to sign and date the Internal Revenue Service W-9 Form.
- Direct property owner(s) to cash payment checks as soon as possible, but not later than 365 days.

### 7.2 Signature Requirements for Instruments

The following requirements must be adhered to when obtaining signatures on instruments:

- If the individual has signed the instrument using a name that is not exactly the same as the name typed on the instrument, add an "also known as (AKA)" signature. The notary references the "also known as (AKA)" signature.
- When using a corporate or representative notary acknowledgement, where more than one person signs the instrument (such as for a company, institution, etc.), the Acquisition Agent adds more pages to the instrument to enable the notary to notarize each person's signature.
- When the Acquisition Agent acts as a subscribing witness, the Acquisition Agent requests that all property owners observe the Acquisition Agent sign as the witness to their signature. The Acquisition Agent signs as a witness in their presence, immediately after the property owner signs. If the Acquisition Agent is acting as a subscribing witness, stamp "Witness" beside the Acquisition Agent's signature on the deed.
- Persons signing as a representative of a company, institution, etc. add their title below their signature.
- For a property owner who cannot write, the Acquisition Agent:
  - Requests that a witness attend the meeting.
  - Instructs the property owner to touch (tot) the pen and make their mark. The property owner may make an "X" or other mark.
  - Signs the property owner's name, indicates signature was written by the Acquisition Agent (for example, *Jane Doe* by *Jane Smith*, Acquisition Agent) and documents this in the Contact Report.



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### 7.3 Acquisition Agent Closing Procedures

Upon the property owner's acceptance of the FMVO, the Acquisition Agent completes the acquisition closing procedures listed below:

1. Finalize the Contact Report
2. Complete the Acquisition Closing Statement
3. Draft an Invoice. List only the individual(s) receiving payment on the invoice. If both spouses sign the deed, then both their names must be on the invoice (and the check), even though only one spouse is listed at top of the deed. The first person's name on the deed must match the social security number. That person will receive the Internal Revenue Service W-9 and will be responsible for all taxes, unless the property owners' request to have multiple checks issued.
4. When all instruments have been completed on a parcel that has relocation involved, immediately notify the Relocation Section in writing [via email] that the property has been acquired. This written notification includes the date the deed was signed.
5. Forward the closing file and all related documents to the Acquisition Supervisor for review. The closing file includes lien holder names, property owner name(s), Resolution and Order or minutes of corporation or non-profits, all signed instruments, notaries, signatures, and a draft Invoice. The Acquisition Agent attaches the Property Closing Checklist to the closing file. The Property Closing Checklist includes the following items.
  - Name and address on the deed match the name and address on the invoice. Check home and business telephone numbers.
  - Check the Tax Identification Number on the Internal Revenue Service W-9 form against the invoice.
  - Dollar amount on the deed equals the dollar amount on the invoice.
  - Deed acreage equals invoice acreage.
  - Check the notary and seal for spelling of names, dates, etc.
  - Compare names on the deed to ownership on abstract. Include proper documentation, if there are differences; such as heirship forms, wills, trusts, life estates, etc.
  - Check abstract for mortgages. List mortgages on the invoice if they apply or supply documentation if they are cancelled, released, satisfied, etc.
  - List all liens, judgments, or lis-pendens on the invoice or send proof of payment.
  - Check for unpaid taxes: (county, city, school, etc.). Unpaid taxes need to be listed on the invoice.
  - Check potentially contaminated sites list. If the property is listed, contact the LPA Property Management Section before acquiring and get the status of the parcel.
  - Check deed clauses; proof and ensure that they are initialed.
  - Note any administrative adjustment amount and the date it was approved.
6. Submit the closing file to the Acquisition Supervisor for review.

### 7.4 Agent Closings<sup>24</sup>

Once an agreement has been reached on property acquisition and the deeds are signed, a property closing may take place. Property closing consists of the verification of title, distribution of checks and relevant documentation to the property owners and any lien holders, and recording of the deed in the appropriate land record office. In most cases, the distribution of checks and relevant documentation are conducted by mail. Please refer to Section 1 of the Property Closing Chapter of the LPA Right of Way Operations Manual for procedures for conducting property closings by mail. In a few instances, property closings are conducted in-person by the ROW Agents.

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In these cases, the Acquisition Agent schedules a meeting to conduct the agent closing. The Title Agent obtains all closing materials and updated title information from the land records and brings this information and materials to the closing meeting. The Acquisition and Title Agents meet with the property owner, explain the closing documentation, and provide the property owner with the acquisition check. A closing statement should be signed by the payee(s) upon receipt of the check. The recordation of the conveyances by the Title Agent is subject to the agreement between the Acquisition Agent and the parties of interest.

### 8. Condemnation

Additional Information on Condemnation proceedings can be found in the Legal Chapter of this LPA Right of Way Operations Manual.

#### 8.1 Identification of Parcels for Condemnation

Acquisition Agents may identify parcels that the agency normally acquires through eminent domain. Some common reasons for eminent domain filing are listed here:

1. Property owner is a state legislator. Prevents any appearance of a conflict of interest. The property owner is provided an FMVO and notified that the acquisition is going directly to condemnation.
2. Title issues
3. Property owner declines to sign the deed
4. Property owner opposition to language in the deed or easement

Acquisition Agents send the property owner a final notice before recommending the parcel for condemnation.

#### 8.2 Recommendation for Condemnation

If a potential condemnation is identified, the Acquisition Agent creates a Recommendation for Condemnation File. The Recommendation for Condemnation File includes the following items and is provided to the Acquisition Officer for review.

- Signed Recommendation for Condemnation Form;
- Copy of Agent's FMVO;
- Contact Report completed and signed;
- W-9 Form (Acquisition Agent should make a good faith effort to get the W-9 signed and completed by the property owner. If the property owner refuses to sign W-9 Form, the Acquisition Agent will leave the form with the property owner and note this on the Contact Report and Invoice;
- Physical addresses (not a post office box) of out-of-state owners of property being condemned, including lessors, renters, and easement holders; and
- Physical addresses (not a post office box) of in-state owners of property being condemned, including lessors, renters, and easement holders.

Upon receipt of a Recommendation for Condemnation File, the Acquisition Officer reviews all records and forwards the Recommendation for Condemnation File to the Review Appraiser and LPA ROW Survey, Maps & Deeds Section Supervisor. The Acquisition Officer may request another acquisition attempt, request additional information, or approve the Recommendation for Condemnation. Upon approval of the Recommendation for Condemnation and file, these documents are included in the parcel file, which is routed to the LPA Legal Section for review.

When the Recommendation for Condemnation package is submitted to the Acquisition Supervisor, the Acquisition Agent conducts the following activities:

## Acquisition

- Informs the LPA Relocation Section of the date the Recommendation for Condemnation package and Form was submitted (if parcels involving relocation are condemned).
- Discontinues seeking Partial Release of Mortgage(s) and deeds.
- The property owner may elect to sell the uneconomic remnant property to the agency and litigate the value of the property to be acquired.
- Prior to submitting a recommendation for condemnation, the ROW Agent notifies the property owner of the submittal of the recommendation for condemnation on the parcel and that the agency may proceed immediately to seek to acquire the property through eminent domain proceedings.
- Discontinues contact with the property owner(s) and their designated attorneys or representatives. If contacted by the property owner(s), or their designated representatives, refer them to the LPA Legal Section and notify the LPA Legal Section that the property owner expressed interest in contacting them or the assigned attorney. Also, ensure that the property owner has phone contact information for the assigned attorney, if this information is available.

## 9. Ongoing Acquisition Procedures

### 9.1 Acquisition Status Report

The Acquisition personnel prepare a weekly Acquisition Status Report [see Acquisition Forms Index - Acquisition Status Report] for each project, listing all parcels and their status. In the Acquisition Status Report, the following information is provided:

1. Number of Files on the project (Note: one File may include several instruments, i.e., W-Deed, Q-Deed, Permanent Easement, Temporary Easement, G-Deed, H-Deed, X-Deed, and Partial Release of Mortgage).
2. Number of Files “in negotiation” (Acquisition Agents have received funding, abstracts, all known instruments, reviewed appraisals, and environmental clearances).
3. Number of Files “acquired” (Acquisition Agents have received and submitted all executed instruments to the Acquisition Supervisor, not including submitted files which are rejected and returned to the field Acquisition Agent for further work).
4. Number of Files “condemned” (Acquisition Agent has submitted a Recommendation for Condemnation package to Acquisition Supervisor).
5. Number of appraisals needed (difference between total Files and Files “in negotiation,” “acquired,” and “condemned”).

The Acquisition Status Report only states that the Acquisition Agent has mailed or delivered these documents to the Acquisition Supervisor. The Acquisition Status Report does *not* report or guarantee that the Acquisition personnel or Title personnel have received, accepted, rejected, and/or processed the documents. The Acquisition Status Report is *not* a conclusive report that all instruments required by the agency to acquire complete Title to the subject land have actually been received, accepted, processed, recorded, paid, and archived by the agency.

### 9.2 Contact Report<sup>25</sup>

Each Acquisition Agent maintains a Contact Report for each parcel they are acquiring. The Contact Report typically is used only by the Acquisition Agent, but can be used by any agency employee or representative that has contact with a property owner. The Contact Report documents interactions and conversations with the property owner, but is not a verbatim record of events. After each contact with the property owner, the Acquisition Agent records the following information in the Contact Report.

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- Confirmation of the names and addresses of all property owners and lien holders (initial contact),
- Race and sex of the property owner (initial contact),
- Date and place of contact,
- Persons present,
- FMVO(s) provided,
- Any counter offers, issues, concerns, problems,
- Reasons property owner would not sign deed (if property owner will not sign the deed),
- Recommendation for resolving issues or condemnation, and
- All other pertinent data.

All correspondence between the Acquisition Agent, the property owner(s), and lien/mortgage holders is attached to the Contact Report. The Contact Report is signed and dated by the Acquisition Agent and reviewed by the Acquisition Supervisor prior to filing in the Permanent File.

### **9.3 Guidelines for Terminology**

In all contact with property owners or their designated representatives, agency personnel avoid use of the terms “offer,” “negotiate,” or “take” in both conversation and in writing.

### **9.4 Property Owner Seeks Higher Authority than Agent**

If the property owner or designated representative demands to speak with a higher authority, the Acquisition Agent refers the property owner to the Acquisition Supervisor.

### **9.5 Environmental Concerns**

Agency personnel, including all ROW Agents, immediately report any potentially contaminated sites or other environmentally sensitive areas to the ROW Environmental Coordinator.

### **9.6 Staking Requests**

The District Coordinator is responsible for requesting that the Project Engineer stake the project to clarify ROW boundaries. If the property owner requests staking, the Acquisition Agent submits the request to the District Coordinator. If the District Coordinator is not available that day, submit the request to the Project Engineers Office and send a copy of the request to the District Coordinator. ROW Agents do not rely on concrete markers for determining ROW boundaries. ROW Agents refer all ROW staking, construction limit, and access questions to the District Coordinator who works with the Project Engineer to respond to such questions.

### **9.7 Title Update**

The condition of the title may change between the time the initial abstract was completed and the time of the acquisition. The Acquisition Agent, upon becoming aware of any change in title, immediately notifies the Title personnel to confirm such changes and obtain an updated title. An updated title must be obtained prior to submitting an invoice to pay for the property specified in the executed instrument.

## Acquisition

### Acquisition Chapter Attachments

#### A. Pre-Approved Deed Clauses

##### 1. Ingress-Egress Clauses:

**Ingress-Egress Clause.** "This conveyance includes all improvements located on the above described land and partially on Grantor's remaining land. The Grantee herein, its Agents, and/or Assigns are hereby granted the right of Ingress and Egress on Grantor's remaining land for removing or demolishing the improvements. The consideration herein named is in full payment of all said improvements."

**Alternative Ingress-Egress Clause.** "This conveyance and the consideration named herein include all improvements located on the above-described land and any improvements which are located and situated in such a manner so as to rest and lie upon both the above described property and the remaining real property of the Grantor(s). The Grantee herein, its agents and/or assigns are hereby granted the right of ingress and egress on the remaining property of the Grantor(s) for the limited purpose of removing or demolishing those improvements which are located and situated in such a manner so as to rest and lie upon both the above described property and the remaining real property of the Grantor(s). This right of ingress and egress does not extend to any improvements, which are located entirely upon the remaining property of the Grantor(s). The consideration named herein is in full payment of all said improvements."

**Alternative Ingress-Egress Clause.** This is a special ingress/egress clause in case of Drainage District approved by the MDOT ROW Title Section.

"The Grantee herein reserves the right of ingress and egress on the above described land for the purpose of clearing debris, dredging and maintenance of (example Hickahala Creek)."

**2. Minerals Clause.** "This conveyance is less and except all oil, gas and other minerals which may be produced through a well bore in accordance with Section 11-27-85 of the Mississippi Code."

**3. Keep Fences Clause.** "The Grantor reserves the right to remove any and all fences from the above described land on or before \_\_\_\_\_, or said fences become the property of the Mississippi Department of Transportation."

**4. Keep Timber Clause.** "There is reserved unto the Grantor(s) hereof the right to cut and remove all merchantable timber located on the lands hereby conveyed, provided such removal is made on or before \_\_\_\_\_. After said date all timber rights and interests, present or future, become vested in the Mississippi Department of Transportation."

**5. Damage Clause.** "It is further understood and agreed that the consideration herein named is in full payment and settlement of any and all damage and compensation which would be allowable under a decree were it rendered by the Court and jury in an Eminent Domain proceeding under the provision of the applicable laws and statutes of the State of Mississippi."

**6. Donations Clause.** Should a property owner wish to donate real property, the donations clause will either be inserted in the deed or incorporated into a separate notarized agreement. It will be necessary to obtain mortgage and/or other normal required releases. A property owner may donate without waiving the right to an appraisal.

"I/We fully understand that we have the right to receive just compensation for the real property herein described based on an appraisal of said property. I/We hereby waive our right to just compensation and donate the real property herein described to \_\_\_\_\_. I/We further understand that we have the right to request that a fair market value appraisal of the property be made and we hereby waive that right."

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**7. Assignment Clause.** "The above Deed of Trust was assigned to \_\_\_\_\_, on \_\_\_\_\_, in Deed Record Book \_\_\_\_\_, Page \_\_\_\_\_, Chancery Clerk's Office of \_\_\_\_\_ County, Mississippi.

### 8. Heirship Clauses:

**Heirship Clause 1:** Should be used when sign deed.

"The parties hereto acknowledge that they are the sole surviving heir(s) at law of \_\_\_\_\_, deceased."

**Heirship Clause 2:** To be used when the heirs do not all sign the same deed.

"Grantor herein acknowledges that he/she is one of \_\_\_\_ surviving heirs at law of \_\_\_\_\_, deceased, said heirs being \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. By this instrument \_\_\_\_\_ is conveying all his/her right, title and interest in and to the above described property."

**9. Appraisal Waiver Clause.** "I/We fully understand that we have the right to receive just compensation for the real property herein described based on an appraisal of said property. I/We hereby waive our right to just compensation and donate the real property herein described to Mississippi Transportation Commission. I/We further understand that we have the right to request that a fair marked value appraisal of the property be made and we hereby waive that right."

**10. Undivided Interest Clause.** "This conveyance is of and for the Grantor(s) undivided interest in and to the above described property."

**11. Disbursement Clause.** "Each Grantor hereof authorizes and directs the Grantee to pay all of the above named consideration to \_\_\_\_\_, and \_\_\_\_\_'s receipt thereof shall be the same as if receipted for by the Grantor(s) hereof."

**12. Ramp/Driveway Clause.** As a further consideration, Grantee agrees to construct a ramp, driveway, or skirt at or about Station \_\_\_\_\_.

**13. Total Take Clause.** This is a total take clause and should be used when the whole piece of property is being bought. This should be typed at the end of the deed.

"It is the intention of this instrument to convey all of that certain parcel of land as recorded in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Chancery Clerk's Office of \_\_\_\_\_ County, Mississippi.

### 14. Crop Clauses

It is understood and agreed between the parties hereto that the consideration herein named does include damage for destruction of growing crops located on the lands hereby conveyed.

It is understood and agreed between the parties hereto that the farming operations on said lands is under a Lease Agreement and that no part of the consideration set out above is intended to cover crop damages to the tenant. Should there be any damages to the growing crops, a separate instrument must be taken from the tenant.

The Grantors reserve the right to harvest the growing crops on above described land and agree to remove said crops on or before \_\_\_\_ (Date)

**15. Mobile Home Clause.** Grantor warrants to grantee mobile home: Make \_\_\_\_\_, Model \_\_\_\_\_, and serial number \_\_\_\_\_.

## Acquisition

### B. Endnotes

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- <sup>1</sup> MDOT Policy, 2002
- <sup>2</sup> MDOT Policy, 2002
- <sup>3</sup> MDOT Policy, 2002
- <sup>4</sup> 49 CFR 24.102(g)
- <sup>5</sup> 49 CFR 24.102(g)
- <sup>6</sup> 49 CFR 24.102(k)
- <sup>7</sup> 49 CFR 24.102(e)
- <sup>8</sup> MDOT Policy, 2002
- <sup>9</sup> MDOT Policy, 2002
- <sup>10</sup> 49 CFR 24.102(c)
- <sup>11</sup> 49 CFR 24.102(c)(2)
- <sup>12</sup> 49 CFR 24.103
- <sup>13</sup> 49 CFR 24.102(c)(2)
- <sup>14</sup> 23 CFR 710.505
- <sup>15</sup> MDOT Policy, 2002
- <sup>16</sup> MDOT Policy, 2002
- <sup>17</sup> MDOT Policy, 2002
- <sup>18</sup> MDOT Policy, 1998
- <sup>19</sup> Mississippi Code of 1972 § 89-1-21
- <sup>20</sup> 49 CFR 24.106
- <sup>21</sup> 49 CFR 24.107
- <sup>22</sup> 49 CFR 24.102(i)
- <sup>23</sup> 49 CFR 24.102(i), appendix
- <sup>24</sup> MDOT Policy, 2002
- <sup>25</sup> MDOT Policy, 2002

**Local Public Agency  
Right of Way Operations Manual**

**Appraisal, Appraisal Review, and Waiver Valuation Function**

The following procedures document the responsibilities of the LPA Right of Way Appraisal and Appraisal Review Sections for performing appraisals and other property valuation-related functions to determine the fair market value of real property.

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The LPA Right of Way Division's Appraisal and Appraisal Review Sections perform appraisals and other property valuation-related functions in connection with developing and reporting estimates of the fair market value of real property. Property valuation policies, processes, and procedures are governed by Federal Regulations, Mississippi Law, and applicable appraisal standards.

As required by federal regulations at 23 CFR 710.201 this section of the Right of Way Operations Manual provides guidance and detailed information regarding policies, processes, procedures, and authorities applicable to real property valuation for governmental acquisition in the State of Mississippi.

Portions of this chapter utilize a narrative style in describing and explaining the requirements of Mississippi Law in the appraisal and valuation of real property.

**1. General Appraisal Policies**

**1.1 Authorities in Law and Regulation**

In addition to the requirements in general law and regulation, the Mississippi Department of Transportation complies with the following laws and regulation that are specific to real property appraisal and property valuation for governmental acquisition or disposal:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 et seq., (the Uniform Act)
- Title 49, Coded of Federal Regulations, part 24
  - § 24.102 Basic Acquisition Policies
  - § 24.103 Criteria for Appraisals
  - § 24.104 Review of Appraisals
- Title 23, Coded of Federal Regulations, part 24
  - § 710.403 Management
- Mississippi Code of 1972, Annotated
  - § 11-27-19 Evidence of value; award and interest
  - § 11-27-21 Damage to remainder; determination
  - § 43-37-3 Acquisition of real property in publicly funded projects
  - § 43-37-11 Buildings, structures and improvements to be acquired with land
  - § 65-1-123 Sale or disposal of unnecessary property
- § 73-34 Mississippi Real Estate Appraiser Licensing and Certification Act of 1990, as amended (the Act). The Act incorporates the Uniform Standards of Professional Practice (USPAP)<sup>1</sup>
- Public Decisions of the Mississippi Supreme Court
  - Case citation footnotes, excerpted text, and narrative explanations provided as applicable throughout this Chapter.



**1.2 LPA Activities and Responsibilities that Require Real Property Valuation**

1. The acquisition of real property for transportation projects
2. Determination of Fair Market Value for donated properties
3. The acquisition of real property through the process of eminent domain
4. The disposal of excess property
5. The purchase of real property that is not subject to the eminent domain process (voluntary transactions)
6. Real property acquisition cost estimates for proposed transportation projects

**1.3 Application of the Before and After Rule in Mississippi**

In explaining the application of the Before and After Rule (BAR) in Mississippi, it is necessary to make numerous citations of decisions by the Mississippi Supreme Court. In the course of explaining the application of those decisions, it is necessary to utilize a narrative style and illustrative examples. Mississippi's BAR imposes unique constraints on the consideration of after condition remainder. Those legally imposed constraints can have a substantial impact on the calculation of the fair market value of the after condition remainder and, consequently, the calculation of just compensation. This section begins with the foundational statement of the BAR as given in the case *MSHC v. Hillman* in 1940:

“When part of a larger tract of land is taken for public use, the owner should be awarded the difference between the fair market value of the whole tract immediately before the taking, and the fair market value of the that remaining immediately after the taking, without considering general benefits or injuries resulting from the use to which the land is to be put, that are shared by the general public.”<sup>2</sup>

Beyond the basic statement of the BAR appearing above, the Mississippi Supreme Court has provided further comment in other citations that more clearly define its meaning. For instance:

“This rule leaves no room for a deduction for any enhancement of the remaining land due to the nature of the facility to be built on the land taken. Furthermore, the landowner is entitled to due compensation not only for the value of the property actually taken, but also for the damages, if any, which may result to the landowner as a consequence of the taking without any deduction therefrom on account of any supposed benefits incident to public use for which the application is made.”<sup>3</sup>

Understanding how to apply the wording used by the court in various appraisal situations does require some familiarity with certain phrases from key decisions in Mississippi Eminent Domain case law, which fit within the overall definition of the BAR in Mississippi that appeared in *Hillman*.

With respect to eminent domain appraisal, there been change to the Mississippi Code since *Hillman*. One of the most significant changes was with respect to the consideration of project influence on the market value of the property being appraised. § 43-37-3 of the Mississippi Code states:

“Any person, agency or other entity acquiring real property for any project or program in which public funds are used shall comply with the following policies: . . .” “(c) . . . Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such

## Appraisal, Appraisal Review, and Waiver Valuation

improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property . . . .”<sup>4</sup>

The following statement from the Mississippi Code should also be considered as being an integral part of the definition of Mississippi’s BAR since “damages to the remainder,” if any, are to be included in the compensation figure that results from the application of the before and after appraisal process. § 11-27-21 of the Mississippi Code states:

“In determining damages, if any, to the remainder if less than the whole of a defendant’s interest in property is taken, nothing shall be deducted therefrom on account of the supposed benefits incident to the public use for which the petitioner seeks to acquire the property.”<sup>5</sup>

This section of the Mississippi Code prevents an appraiser from using any increase in value to any part of the after-condition remainder (benefits) to avoid paying damages. Many States do permit the consideration of “*benefits*” to be utilized in offsetting damages to the remainder tract and some permit the use of “benefits” to recognize that the remainder property will retain certain physical characteristics in the “*after condition*” that were crucial to the property’s market value in the “*before condition*.” The “*just compensation*” calculation in those States recognize that there will be a retention of those critical characteristics, and has been described as “off-the-back theory” and allowing high-value areas to “*float back*” or “*slide back* with the relocated ROW.” Off-the-back theory, floating back, and sliding back with the relocated ROW is not permitted under Mississippi’s BAR. Mississippi law does not allow the consideration of benefits to offset any part of the compensation calculation.

The real-world consequences of Mississippi’s prohibition on considering benefits is that landowners are sometimes required to be compensated as if they are permanently losing higher-value land when that “*higher-value land*” is actually being relocated or “*sliding back*” with the relocated ROW line within the total remainder property.

To clearly illustrate Mississippi’s treatment of the “benefits” issue, it is necessary to provide an example of the constraints imposed by Mississippi’s BAR with a contrasting “*real-world*” market value for the “*after condition*”. For example, let’s use an undeveloped 40-acre property located at an intersection of two highways in a growing suburban area. Of the total 40-acre property 1 acre at the intersection corner is considered to be a high-value commercial site and the remaining 39 acres is considered to be lower-valued. A Mississippi highway project is going to widen one of the highways and will require taking some of the undeveloped land from the 40 acre property, specifically land in the corner where the two highways intersect. If the “*corner*” characteristic is the primary reason for a high value 1-acre commercial area in the before condition, and the total “*after condition*” remainder will still have an equally commercially-viable “corner” characteristic then, *in the real world*, the high-value land created by that corner characteristic is retained by the “total property” in the after condition. Stated another way, because the corner characteristic is not lost, the taking will not cause the loss of any “*corner value*” in the context of the total remainder property. That’s the practical or “real-world” reality - a corner existed in the BEFORE and an equally viable corner will exist in the AFTER. But, under Mississippi Law, valuing the after condition remainder as if the corner value were undisturbed would be wrong.

Where a partial taking includes part of a corner area that has a higher market value than the rest of the subject property, the requirements of Mississippi’s Eminent Domain Law demand that the property owner must be compensated as if some or all of the “corner” value is being permanently lost. But, failure to adhere to this requirement of Mississippi Eminent Domain Law will result in a severely understated opinion of compensation due the owner under the law. The market value of the after condition remainder is a mix of what actually exists and

## Appraisal, Appraisal Review, and Waiver Valuation

the artificially prescribed market value contrived by Mississippi Law. The same concept applies if the frontage land has a different H&BU than other parts of the total property.

As a further example:



In each quadrant of the intersection, the bold black lines forming a rectangle represent the property lines for each total ownership. Within each ownership, there are two H&BU's, low-value commercial (green), and high-value commercial (red) at the corner. The yellow-shaded area in the upper-left quadrant is the LPA acquisition area. The red triangle adjoining the yellow-shaded LPA acquisition is the remainder portion of the "high-value commercial" H&BU.

Under Mississippi Law, whatever value rate is placed on the "*high-value*" commercial in the BEFORE condition, compensation to the owner must be calculated at that rate for that portion that is within the LPA acquisition.

The sketched property in the upper right quadrant of the intersection represents the practical reality of how the "*real-world*" values a remainder property in the "*after condition*". In other words, if the appraiser were looking at the property in the upper-right corner of the intersection, independent of the BAR, they would recognize that the total property has a high-value area adjacent to the intersection corner. Despite the change in size and shape, the total property still has a corner characteristic, still controls the corner, still has access, and still has a high-value corner. The shape of the corner is changed as a consequence of the LPA acquisition, but the practical reality would be that a higher value in the corner still exists! If Mississippi's Before and After appraisal process reflected the true reduction in "*Market Value*" to the total ownership caused by the LPA's acquisition, this sketch in the upper-right corner of the intersection is how the after condition valuation would be considered. Mississippi Law does not allow this.

The "*after condition*" property that is evaluated under Mississippi Law is one that is a mix of market value and artificial restrictions imposed by Mississippi Law that require ignoring or disregarding certain components of "actual" market value. This can be quite perplexing at times because there are some Catch-22's encountered in trying to distinguish between the actual after condition remainder tract and the artificial but law-prescribed after condition remainder tract. This is especially true when considering "damage" to the remainder.

## Appraisal, Appraisal Review, and Waiver Valuation

In the “*real-world*” after condition, if a high-value one acre corner tract can still exist on the total remainder tract and there is nothing physical or legal that would prevent a commercial use of a redrawn one acre then the landowner has not lost any commercial corner value. The market value of the “*before condition*” corner commercial land that was within the MDOT taking could be recovered by redrawing the lines of the corner commercial on the “*after condition*” property. The problem, from the standpoint of Mississippi Law, is that in order to reconstitute a one acre corner commercial tract in the “*after condition*” the appraiser would have to reposition those lines to include other adjoining land that had a LOWER value in the “*before condition*”. For the appraisal process, if any particular square foot of land had value \$X in the before, is then opined to have a value of (\$X + \$1) in the after, then the appraisal process has used “*benefits*” to offset a part of compensation. On the subject of “Benefits” Mississippi Case Law says.....

“This rule leaves no room for a deduction for any enhancement of the remaining land due to the nature of the facility to be built on the land taken. Furthermore, the landowner is entitled to due compensation not only for the value of the property actually taken, but also for the damages, if any, which may result to the landowner as a consequence of the taking without any deduction therefrom on account of any supposed benefits incident to public use for which the application is made.”<sup>6</sup>

This creates additional issues for the calculation of just compensation under Mississippi Law. By way of another example, say the LPA taking is 0.80 acres of a 1.00 acre corner commercial H&BU area. Refer back to the “upper-left quadrant” color sketch on the previous page. The appraisal situation is now left with a triangular-shaped 0.20 acre remainder that was valued as part of a 1-acre corner commercial tract in the BEFORE condition. And further, although that 0.20 acre area is still part of a 39.20 acre remainder, the 0.20 acre frontage is “no accessed”. The property owner could still get to the 0.20 acres from the adjoining land he/she owns and still have more than enough total land to reconstitute a one-acre “commercial corner”. In the real world, that would be true. But, for Mississippi’s application of the BAR, the valuation is not dealing with “*real world*” considerations. And, to underline that, the Mississippi Supreme Court has said:

“ . . . [the appraiser]. . is appraising the partial taking, before and after, the contours of which are formed by law and not value.”<sup>7</sup>

Because of this restriction, the consideration of valuation isn’t finished with the compensation issue yet. As you can see in the illustration on the previous page, (the one in the upper left corner of the intersection), there is still that 0.20 acre remainder to contend with. For reasons that should be plainly obvious, the small triangular 0.20 remainder with no legal access cannot maintain its “*before condition*” commercial H&BU. In order to do that, the appraiser would have to consider that this 0.20 acre remainder could recover a sufficient size from the other land it adjoins – a forbidden consideration under Mississippi’s BAAR. And then there’s the issue of legal access - If the adjoining land, that had a lower value in the before condition, were to be utilized to provide the path of access to the 0.20 acre remainder, then the land needed for that access purpose is effectively annexed to the higher value H&BU and subsequently loses its LOWER VALUE H&BU as a direct consequence.

In order to contemplate the retention of ANY corner commercial value, it is logically unavoidable that retention of a corner characteristic be recognized for the “*after condition*”. But then, recall the case law, adjoining “*lower value*” land cannot be expropriated from its before condition H&BU to be converted to a “*higher value*” access strip servient to the commercial remainder because to do so means increasing the value of that strip in the “*after condition*”. Being prohibited, by law, from considering any of the adjoining lower-valued land in such a way as would act to a preservation of value, there is no alternative but to show

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“market value damage” to the 0.20 acre remainder. The only way to recognize preservation of the 0.20 acre’s BEFORE condition valuation rate would be to recognize that same commercial H&BU (and its value) to the adjoining lower-value land, a consideration that is specifically prohibited under MS Code § 11-27-21 and repeatedly in MS Case Law.

Thus, despite the fact that the total remainder property will retain a corner characteristic, have more than sufficient land to reconstitute a one-acre corner commercial tract, and will have more-than-adequate vehicular access to that total 39.20 acre remainder tract, application of Mississippi’s Before and After Rule requires that market value damages be recognized to the 0.20 acre theoretical commercial remainder area. It may very well seem unreasonable to pay market value damages for a purely theoretical commercial remainder, but it is a consistent application of the restrictions on consideration of benefits that is imposed by Mississippi Statute Law and Case Law.

### 1.4 Prevention of Conflicts of Interest<sup>8</sup>

Conflicts of interest are prevented in the appraisal process through the following procedures:

- a. No Appraiser or Review Appraiser, or person designated to perform a waiver valuation has any direct or indirect interest in the real property being appraised that would in any way conflict with the preparation or review of the appraisal.
- b. No Appraiser or Review Appraiser acts as an Acquisition Agent for real property that they have appraised.
- c. Compensation for appraisal or appraisal review work is not based on the amount of the valuation.

### 1.5 Types of Property Valuation<sup>9</sup>

The format and level of documentation for a property valuation may vary depending on the complexity of the valuation problem. The main types of property valuations are discussed below:

#### A. Appraisal Waiver (Waiver Valuations)

An appraisal is not required if the property owner releases the LPA from the obligation to perform an appraisal. This can occur in under two circumstances: a) the property owner donates the property and releases the LPA from the obligation to perform an appraisal, or b) the LPA determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated to be low, based on a review of available data.<sup>10</sup> In the latter case, a Waiver Valuation documents the estimated value.<sup>11</sup> Low value is defined as not exceeding \$10,000.<sup>12</sup> Parcels may be selected for waiver valuation if the parcel is a non-complex land only acquisition with nominal improvements and no damages, if any, consists of costs-to-cure items only. The basis of the valuation is documented in the waiver valuation report.

The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency. They also may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. Additional information on Waiver Valuations can be found in Section 2 of this Chapter of the LPA Right Of Way Operations Manual.

#### B. Minimum Standards Appraisal (Short Form Valuation)<sup>13</sup>

In the case of some low value and simplistic acquisitions, only a minimum standards appraisal, or Short Form Valuation, may be used, if an appraisal is required.<sup>14</sup> Low value is defined as not exceeding \$10,000. Simplistic acquisitions are defined as those that involve:

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- i. Partial or complete acquisition of vacant unimproved land,<sup>15</sup> or
- ii. Partial acquisitions where damages are minimal and cost-to-cure items are nominal.<sup>16</sup>

Additional information on Short Form Valuations [ROW 023] can be found in Section 5 of this Chapter of the LPA Right of Way Operations Manual.

### C. Detailed Appraisal (Narrative Appraisal Report)

All other acquisitions require a detailed appraisal referred to as a Narrative Appraisal Report [ROW 024]. Additional information on Narrative Appraisal Reports [ROW 024] can be found in Section 5 of this Chapter of the LPA Right Of Way Operations Manual.

## 1.6 Appraisal Review Requirements

The LPA's appraisal review process includes, at a minimum, the following procedures:<sup>17</sup>

- i. A qualified Review Appraiser examines all appraisals to assure that they meet applicable appraisal requirements.
- ii. The review appraiser shall prepare a written report that identifies the appraisal report(s) reviewed and document the findings and conclusions arrived at during the review of the appraisal(s).
- iii. If the Review Appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the Review Appraiser may develop appraisal documentation either independently or by reference to acceptable relevant information developed by others and in accordance with the LPA's Review Appraisal procedures to support an approved or recommended value.
- iv. The Review Appraiser's certification of the recommended or approved value of the property is set forth in the Reviewing Appraiser's Estimate of Fair Market Value [ROW 682] (a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval). Any damages or benefits to any remaining property also are identified in the statement. Usually, the Review Appraiser establishes the amount of the LPA's offer of just compensation.
- v. A Local Public Agency project follows the same guidelines as a MDOT project. The Review Appraiser must be a licensed appraiser and the agency establishes just compensation.

## 2. Waiver Valuation Procedures

The LPA may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at low value, based on a review of available data.<sup>18</sup> Low value is defined as not exceeding \$10,000.<sup>19</sup> In this case, a Waiver Valuation is made to document estimated value.<sup>20</sup>

If a Federal Agency is funding the project, then it may approve to exceed the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph.<sup>21</sup>

### 2.1 Identifying Parcels for Waiver Valuation

Parcels may be selected for Waiver Valuation if the parcel is a land only acquisition with no improvements and no damages are assessed to the remainder.

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### **2.2 Documenting Waiver Valuations**

Based on the three (3) comparable sales provided for each identified parcel, the Acquisition Agent establishes a value for each parcel that qualifies as a Waiver Valuation. The Acquisition Agent prepares a Waiver Valuation Form for each parcel and distributes the Waiver Valuation Form to the LPA Acquisition Section and the Relocation Section, if applicable.

## **3. Appraisal Preparation Procedures (Pre-Property Owner Contact)**

### **3.1 Five-Year Sales History**

Upon notification of a new project, the Appraisal Supervisor assigns available staff to prepare a five-year sales history for each parcel on the project. This can be completed upon the LPA Appraisal Section's receipt of the project from the LPA Survey, Maps & Deeds Section or upon receipt of a copy of the deraignment of title. The five-year sales history becomes part of the appraisal report.

### **3.2 Materials Furnished to Appraisers**

Each Appraiser is provided a copy of the ROW Acquisition Map, the environmental document, the environmental commitment sheet, the construction plans, the deeds, aerial photography, five-year sales history, and other necessary instruments from the LPA Survey, Maps & Deeds Section.

### **3.3 Project Acquisition Kickoff Meeting**

Upon receipt of the acquisition project start date, the LPA schedules a project acquisition kickoff meeting through appropriate LPA ROW Section Officers. Each Section Officer determines the appropriate LPA personnel to invite. Invited personnel may include Acquisition Agents, Relocation Agents, Appraisers, Property Management Agents, Survey, Maps & Deeds Technicians, District Coordinators and FHWA. Other invited personnel may include District Utility Coordinators, District Pre-Construction Engineers, and other staff, as appropriate. The project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project.

This is a short meeting of the entire acquisition project team to establish the basic project objectives. The topics discussed at the project acquisition kickoff meeting include:

1. Review project files
2. Project start and end dates, if known
3. Contract letting schedule and desired possession date
4. Project purpose and benefits
5. Contact information for:
  - Project Engineer team
  - Relocation Officer(s)
  - Acquisition Agent(s)
  - Review Appraiser
  - Appraisal Team Leader
  - Property Management Agent
6. Review maps
7. Discuss staffing
8. Establish timelines
9. Tour the project by map, vehicle, and/or foot to become familiar with and oriented to the route of the proposed highway and the acquisition areas. In particular, look for potential property owner and displace issues. Bring potential issues to the attention of the LPA for resolution.
10. Identify priority parcels. Priority parcels may include: parcels involving relocation of displacees, relocation of utilities, or other complex parcels (such as those involving

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improvements, hazardous waste, governmental agencies, partnerships, businesses, churches, casinos, associations, estates, multiple owners, and out-of-state owners). The Appraisal Supervisor, in coordination with the Appraisal Team Leader and the District Coordinator, determines the order in which parcels are appraised and acquired.

11. Number and size of underground storage tanks as well as any other information on potentially contaminated sites.
12. Review environmental commitments.
13. Review special construction features.

### **3.4 Pre-Appraisal Checklist**

The Appraisal Team Leader works with the assigned Appraisers to complete all items on the Pre-Appraisal Checklist, listed below:

- ☐ Determine if funding is approved for sales work only or for the entire project.
- ☐ Obtain correct project detail and user codes for the project.
- ☐ Locate the property on the ground, according to stakes, distances from existing highway centerline, and distance of current right of way from current highway centerline.
- ☐ Obtain status of office facilities, supply needs, keys.
- ☐ Check with the Appraisal Supervisor for any recent projects in the county or surrounding area. Obtain the Comparable Sales Brochure or recent sales data, as applicable.
- ☐ Check the Condemnation Status Report for any court cases in the county on other projects. Contact relevant appraisers for information relevant to the project.
- ☐ Conduct Five-Year Sales Histories for all files, if not completed previously. If completed, inspect the deeds to see that the Five-Year History is attached to each deed.
- ☐ Inspect the project route. Note status of staking, improvements in close proximity to proposed right of way, topo missing from maps, type of property, special uses or situations, any "same names" on different files, and forward these by memorandum to the Appraisal Supervisor.
- ☐ Contact the District Coordinator with any staking requests, as applicable. Provide station numbers for any missing stakes and make special requests for proximity staking.
- ☐ Contact the Appraisal Supervisor and advise of general status and preparedness for beginning the project.
- ☐ Obtain copies of ROW Acquisition Maps for each appraiser plus one spare set.
- ☐ Obtain construction plans and aerial photo, if available.
- ☐ Obtain one (1) large county map and one (1) small county map for each appraiser
- ☐ Inspect ROW Acquisition Maps for discrepancies such as, missing acquisition acreage, remainder acreage, lines missing, missing pages, etc.
- ☐ Inspect ROW Acquisition Maps for X-Deeds. Request X-Deeds, if needed.

### **3.5 Prepare Comparable Sale Brochure**

The first step of the appraisal process is for all Appraisers to go to the project site and develop a Comparable Sales Brochure. Appraisers continually record comparable sales throughout appraisal process as they are identified. The Appraisal Team Leader is responsible for keeping the original Comparable Sales Brochure. The process for developing a Comparable Sales Brochure is detailed below:

1. Inspect the project route with all Appraisers and identify the type and number of improvements to be appraised. Make note of the specific file numbers to aid the Appraisal Team Leader in making file assignments.
2. Through the phone directory or references from local real estate professionals, identify contractors that can provide cost estimates for the following areas, as required:
  - Residential
  - Commercial
  - Septic tank



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- Fencing
  - Driveway
  - Pond
  - Metal buildings
  - Service station canopies
3. Make a list of these contractors and place it in the Comparable Sales Brochure. Contact the contractors(s) and request that they complete the Vendor Form.
  4. Upon receipt of the Vendor Form, inspect it to ensure all information is completed and place a copy of the Vendor Form in the Comparable Sales Brochure. Send the original Vendor Form to the Appraisal Supervisor.
  5. Research who provides the following services to the property:
    - Sewer
    - Electric
    - Cable television
    - Police
    - Fire
    - Schools (public and private)
  6. Contact the local office of the Soil Conservation Service and retrieve flood maps and other information.
  7. Secure any copies of “real estate listing fliers” available in the area.
  8. Contact local real estate professionals regarding listings and sales in the area. Make notes on the conversation, especially information that could have market influence, and place this information in the Comparable Sales Brochure.
  9. Combine all market information and assemble it in the Comparable Sales Brochure.
  10. Review the Five-Year Sales History and identify files that have had sales transactions. Contact properties found in the Five-Year Sales Histories and confirm sales information.
  11. Appraisers, in coordination with the Review Appraisers make a determination of the physical limits of the sales search area and how far back in time to research for sales activity.
  12. Assign one Appraiser per search area (depending on the organization of the county's records) and proceed with review of the sectional indexes to identify sales that have occurred. Note transactions on the Record Search List [ROW 717].
  13. After noting all sales, review deeds for obvious disqualification criteria, i.e., sale between family members, undivided interests, etc. Make a note of disqualified sales on Record Search List [ROW 717]. Make copies of sales descriptions not disqualified.
  14. Make copy of the deed to include the address and telephone numbers of the grantor and the grantee.
  15. After making copies of the deeds, review them for same-seller or same-buyer so as to avoid numerous calls to one individual during the confirmation process. Assemble those deeds for confirmation to be done by each Appraiser. When confirming the sale, ask specifically if the sale was an “arms length transaction.”
  16. Prior to telephone contact with grantor/grantee, identify special items the Appraiser will check, i.e., water service, family or business relationships, school district, acreage, adjoining property, leases, cultivated acreage, etc. Avoid numerous contacts with the information provider.
  17. Have a Comparable Sales Data Form [ROW 025] available for each call. Fill out Comparable Sales Data Form [ROW 025] as completely as possible.

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18. Visit comparable property sites and complete the following activities (Confirmations of improved properties receive priority on scheduling inspections):
  - Confirm improved properties with a Description of Improvements Form [a component of ROW 024, Appraisal], completing the form on-site.
  - Make notes of any pertinent comments made by the property owner.
  - Take a photo at the time of inspection.
19. Contact the local chamber of commerce, industrial development board, economic development authorities, etc. and retrieve all pertinent information.
20. Prepare the improvement sketch on a separate sheet. Place the sale number on this sheet or, if sale numbers haven't been assigned yet, place the deed book and page number on the sheet.
21. Sketch the sale's location on the master location map.
22. Submit all documents (Comparable Sales Data Form [ROW 025], photo, Description of Improvements Form [a component of ROW 025, Comparable Sales Data Form], deed(s), Property Analysis Form [a component of ROW 025, Comparable Sales Data Form], and special notes) to the Appraisal Team Leader for proofing and assembly.
23. Assemble deeds separately.
24. Update the Comparable Sales Brochure throughout the appraisal process. As each Appraiser on the project confirms a new comparable sale, that Appraiser prepares a Comparable Sales Data Form [ROW 025] on the new sale and provides a copy to the Appraisal Team Leader for distribution. The Appraisal Team Leader provides the new Comparable Sales Data Form [ROW 025] to the Appraisal Supervisor. The Appraisal Supervisor provides the Comparable Sales Data Form [ROW 025] to the Review Appraiser. Following approval, the new Comparable Sales Data Form [ROW 025] is distributed to the Appraisers on the project and added to the Comparable Sales Brochure.
25. Review Appraiser approves the Comparable Sales Brochure prior to initiation of the appraisal process. The Review Appraiser's approval memorandum is placed in the Comparable Sales Brochure.

### **3.6 Assignment of Parcels to Appraisers**

Once the Comparable Sales Brochure is completed, the Appraisal Team Leader assigns particular parcels to each Appraiser. When assigning parcels, the Appraisal Team Leader arranges related files together. Related files include those properties owned by the same individual or properties with involvement of family, extended family, or business partners. For each parcel to which they are assigned, the Appraiser receives the deed(s) and five-year sales history. The Appraisal Team Leader ensures that copies are made for each Appraiser and the Review Appraiser on the project. Each Appraiser makes copies of relevant ROW Acquisition Maps for their assigned parcels and highlights the acquisition areas.

### **3.7 Appraiser Parcel File Preparation**

Based on the materials provided by the Appraisal Team Leader at the assignment of parcels, the Appraiser prepares an Appraisal Parcel File for each parcel that they will appraise. This file includes:

- Supporting documents, any notes;
- Title abstract [ROW 039];
- All deeds; and
- Five-year sales history [a component of ROW 024, Appraisal].

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### 3.8 Appraiser Site Visit

The Appraiser drives by their assigned parcels to identify preliminary site characteristics. If the Appraiser knows improvements exist on their assigned parcels, the Appraiser may request that the Relocation Agent accompany them on the drive by site visit.

## 4. Appraiser–Property Owner Contact Procedures

### 4.1 Initial Property Owner Notification

As soon as feasible, the Appraiser or designated right of way agent notifies the property owner by telephone or registered mail of the LPA's interest in acquiring the real property and the property owner's basic protections under law.<sup>22</sup> In the initial phone call or letter to the property owner], the Appraiser or designated ROW Agent shall include the following items:

1. Identifies themselves as an Appraiser or ROW Agent of the LPA and provides their name, title, and other contact information, as appropriate.
2. Explains that the LPA is developing a transportation project and describe the acquisition of all or a portion of their property that is needed.
3. Requests permission to inspect the property. The property owner or their designated representative is to be offered the opportunity to accompany the Appraiser or designated ROW Agent during this property inspection.<sup>23</sup> If relocation is a factor, the Relocation Agent is to be notified of the time and date of the property owner contact and inspection date.<sup>24</sup>
4. If the property owner(s) or designated representative(s) is unable to meet or declines the offer to accompany the valuation inspection, the Appraiser or designated ROW Agent should confirm permission to inspect the property unaccompanied. Under no circumstances should an Appraiser go onto a property if a property owner has forbidden access to that property. The Appraiser or designated ROW Agent shall hand-deliver, or transmit by certified mail, an initial contact package, to the property owner(s) or their designated representative(s), including the following:
  - Owner-Appraiser Contact Letter [Owner-Appraiser Contact Letter],
  - Highlighted copy of the ROW Acquisition Map, and
  - *Citizen's Right of Way Acquisition Guide.*

This initial contact package is sent by registered/certified mail.<sup>25</sup> The Appraiser or designated ROW Agent shall document whether they were able to meet with the property owner(s) or designated representative(s) and retains the registered/certified mail receipts in the Appraisal File.

5. If the property is an improved rental, asks the property owner for the tenant's phone number and make arrangements with the tenant for inspection.
6. Asks the property owner if they have seen stakes on their property.
7. Asks if there have been any recent sales of property in the area that could be used as part of the appraisal.
8. Documents all contact with, and attempts to contact, the property owner(s) or designated representative(s) property owner contact record (part of the Appraisal Report).

If the property owner(s) refuses to give permission to enter the property and is verbally hostile toward LPA employees, the Appraiser explains to the property owner that the Appraiser cannot come onto the property and an appraisal will be made from the public right of way. All hostile property owners are reported to the Appraisal Supervisor and District Coordinator immediately.

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If all options are exhausted and the Appraiser is unable to contact the property owner, the Appraiser proceeds with a site visit, talks with adjacent property owners, conducts internet and/or courthouse research, and completes all forms to the best of their ability.

### 4.2 Property Inspection<sup>26</sup>

If the property owner is not available to meet in-person, the property owner must be contacted by registered/certified mail (see Section 4.1 above for the documents that must be mailed to the property owner).<sup>27</sup> The procedures for the property owner contact are provided below:

- LPA staff members do not go onto a property if a property owner has forbidden access to that property.
- If it is anticipated that relocation is likely to be a factor in the acquisition, a Relocation Agent also should be offered the opportunity to attend the initial property owner visit with the Appraiser or designated ROW Agent.<sup>28</sup>
- Bring the following items to the initial property owner interview:
  - Camera
  - Writing pad and pens
  - Description of Improvement Form [a component of ROW 025 Comparable Sales Data Form]
  - Photocopy of property map
  - ROW Acquisition Map
  - Several copies of the *Citizen's Right of Way Acquisition Guide*
- Show LPA identification, introduce themselves, remind property owner of earlier phone/letter contact, and state why they are there.
- Provide property owner with the *Citizen's Right of Way Acquisition Guide*, a copy of the highlighted ROW Acquisition Map for their parcel, and a business card. Review the *Citizen's Right of Way Acquisition Guide* and ROW Acquisition Map with the property owner and respond to questions.
- Explain to the property owner(s) that other LPA Agents and contractors may contact them to inspect the property.
- Determine whether the property owner wants to accompany the Appraiser during the inspection. Inspect the property and conduct the following activities:
  1. Measure improvements (See Section 4.3 of this Chapter of the LPA Right Of Way Operations Manual for additional information on measuring and drafting improvements)
  2. Photograph acquisition area, surrounding improvements, and road frontage (See Section 4.4 of this Chapter of the LPA Right Of Way Operations Manual for additional information on photographing the acquisition area and any improvements)
  3. Make notes to determine real versus personal property (See Section 4.5 of this Chapter of the LPA Right of Way Operations Manual for additional information on the personal and real property inventory)
- During the property inspection, if any potential contaminated sites, historic sites, or other environmentally sensitive areas are noted, the Appraiser or designated ROW Agent shall notify the Appraiser Supervisor by interdepartmental memorandum with a copy transmitted to the ROW Environmental Coordinator.<sup>29</sup>

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### **4.3 Measuring and Sketching Improvements**

The Appraiser must measure and sketch the improvements. The improvements are measured completely whether a Short Form Valuation [ROW 023] or a Narrative Appraisal [ROW 024] is being prepared.

### **4.4 Photographing the Acquisition Area and Improvements**

The Appraiser photographs the acquisition area. Photographs are to include views from both directions and of the remainder. Photographs also are taken of land, front and rear exterior of the improvements, and sample interior rooms. Photographs also are taken of any improvements on the remainder.

### **4.5 Personal and Real Property Nature of Improvements**

The Appraiser and the relocation agent identify and come to a resolution whether property is personal property or real property. Every effort must be made to do this prior to, or at the time of, the appraisal.<sup>30</sup> The Appraiser notes the real or personal property nature of each improvement in the appraisal report. The Appraiser documents all improvements, regardless of whether they have "contributory value."

For mobile homes, determination of the real or personal nature of the improvement is made based on the following questions:

- 1) How is the mobile home affixed to the property?
- 2) Have the wheels and axles of the mobile home been removed?
- 3) Does the mobile home owner file for homestead exemption at the County Courthouse?
- 4) Does the mobile home have any additions to the original structure (e.g., rooms, deck, roof)?

The LPA Property Management Section, Acquisition Agents, Relocation Agents, and District Coordinator can obtain the real and personal property information from the appraisal report.

### **4.6 Changes Identified in the Property Owner Interview**

If changes are identified in the property owner meeting, the Appraiser prepares a memorandum to the Appraisal Supervisor to document the changes. Changes may include name or ownership changes, property line changes, or X-Deed or Q-Deed requests. The Appraisal Supervisor forwards these changes to the Title Section for processing.

## **5. General Appraisal Documentation Procedures**

### **5.1 Identification of Environmental Concerns, Historic Sites, and Other Environmentally Sensitive Areas<sup>31</sup>**

If any environmental concerns (e.g., gas station, industrial sites, farms, back washing sites, junkyards, funeral homes, dry cleaners, aerial applicators (crop dusters), oil companies, etc.), historic sites, or other environmentally sensitive areas are identified during the appraisal, the Appraiser or designated ROW Agent shall notify the Appraisal Supervisor, who, in turn, notifies the LPA ROW Environmental Coordinator. The LPA ROW Environmental Coordinator shall consider the information provided and advise the Appraiser Supervisor on whether to continue the appraisal.

### **5.2 Influence of the Project on Just Compensation<sup>32</sup>**

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.<sup>33</sup>

### 5.3 Cost to Cure<sup>34</sup>

Under long-standing precedent expressed repeatedly in Mississippi case law, a property owner may be entitled to compensation for the cost of restoring specific functional utility(s) that is lost as a consequence of the acquisition. The principle for inclusion of “cost-to-cure” in the calculation of compensation to the property owner comes from Mississippi case law. However, the use of “cost-to-cure” must adhere to a certain intent. The Mississippi Supreme Court has stated:

“Of course, in determining “after acquired value” of the property, the jury is authorized to take into consideration the necessity of rebuilding fences and wells, the necessity of relocating roads, and similar items. These items, however, are all part of the depreciated value of the property in the manner in which it has been used or for which it is best adapted.”<sup>35</sup>

The phrases: “*the necessity of rebuilding...in the manner in which it has been used or for which it is best adapted*” are the key. In other words, “cost-to-cure” is about restoring a specific functional utility that is being lost as a consequence of the acquisition. The most commonly encountered example would be agricultural fencing that serves a livestock containment function. If a portion of the owner’s existing fence is within the acquisition area and will be destroyed, then the livestock containment function that existed in the before condition will be lost. In order to restore the functional utility of livestock containment, it will be necessary for the owner to construct new fencing. In the case of fencing, this principle has also been extended by the MSC to cases in which the fencing served only to show a property boundary or to prevent others from entering property.<sup>36</sup> Under Mississippi Law, the cost to restore such functional utility is to be included as part of the “depreciation” of the remainder property’s after condition valuation. This principle is applicable to other items, as noted in the excerpted text of the decision above.

### 5.4 Partial Acquisitions and Uneconomic Remnants (X-Deeds)

An uneconomic remnant is a remainder property that the LPA has determined has little or no utility or value to the property owner.<sup>37</sup> In the case of the partial acquisition of a property, the compensation for the property being acquired and the compensation for damages, if any, to the remaining property are separately stated in the FMVO [ROW 205].<sup>38</sup> If the partial acquisition is determined to leave an uneconomic remnant, the Appraiser sends a memorandum to the Appraisal Supervisor requesting an X-Deed to acquire the uneconomic remnant. The memorandum includes the following information.

- Description of the area for which the X-Deed is needed;
- Explanation of why an X-Deed is being requested;
- Project number, file number, property owner, county, and physical location;
- A copy of the ROW Acquisition Map with the X-Deed area highlighted; and
- Written approval by the Review Appraiser.

A separate memorandum is required for each X-Deed request. Under no circumstances should a memorandum contain more than one (1) parcel number and one (1) project number.

If the project is a rush, the Appraiser may contact the Appraisal Supervisor by phone and immediately follow up with a memorandum. The Appraisal Supervisor forwards the X-Deed request to the LPA ROW Survey, Maps & Deeds Section.

### 5.5 Quitclaim Deeds (Q-Deeds)

Quitclaim Deeds (Q-Deed) [ROW 640A] convey only what present interest a person may have in a particular property without making any representations or warranties of title. Q-Deeds are used to acquire interests in property that are not fee simple, such as leases. Upon identifying Q-Deed interest on a property, the Appraiser retrieves any available supporting

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documentation (e.g., lease, will, option, etc.). The Appraiser then provides a memorandum to the Appraisal Supervisor describing the Q-Deed [ROW 640A] interest. Since there may be more than one Q-Deed [ROW 640A] interest on a given property, it is permissible to request more than one Q-Deed [ROW 640A] for a single property on one (1) memorandum. However, under no circumstances should more than one (1) property (master file number) be placed on one (1) memorandum. All supporting documents are attached to the memorandum. Upon receipt of the memorandum, the Appraisal Supervisor contacts the LPA Title Section and the LPA ROW Survey, Maps & Deeds Section regarding the Q-Deed [ROW 640A] request.

### 5.6 Private Water Wells and Private Sewers

If there is a private water well or private sewer on the property, the Appraiser includes it in the appraisal and completes the following:

1. Gathers information on the water well/sewer including a list of households and businesses served by the water well/sewer and the location of the water well/sewer.
2. Prepares a memorandum to the District Coordinator that lists the impacted households and businesses, the station number, and other relevant information. The District Coordinator notifies the Project Engineer of the water well or sewer, and capping of the well is addressed in the construction contract.
3. If a single party is affected, prepares a cost to cure in order to compensate the property owner. A cost to cure, however, is only prepared if the well contributes to highest and best use of the property.
4. If multiple parties are affected by the water well, prepares a Q-Deed [ROW 640A] for each party. All parties are compensated. In most circumstances, this compensation is handled through an administrative adjustment.

### 5.7 Property Line Overlap<sup>39</sup>

If an Appraiser finds a property line overlap, the Appraiser notifies the LPA ROW Survey, Maps & Deeds Section for an investigation of the overlap. If there is an overlap, the LPA ROW Survey, Maps & Deeds Section corrects the ROW Acquisition Map and the deed(s). The Appraisal Section determines compensation for property owners on a case-by-case basis.

### 5.8 Crop Irrigation Systems

Crop irrigation systems are appraised. These systems are considered improvements. If the well-head for the irrigation system is being acquired, then the system must be appraised and acquired via cost to cure. If the well-head is not being acquired, then the irrigation system may be relocated and the Appraiser notifies the Relocation Agent. If the crop irrigation system is owned by the operator/tenant, the value of the system is included in the Q-Deed [ROW 640A].

### 5.9 Timberland Agreements<sup>40</sup>

If sales of comparable timberland are not available, a registered timber appraiser (who may be a licensed forester) appraises the value of timber in a timberland appraisal and provides it to the Appraisal Team Leader with a copy to the general correspondence file. The Appraiser adds the timberland appraisal to the appraisal report.

### 5.10 Easements

**Temporary Easements [ROW 761].** The LPA ROW Survey, Maps & Deeds Section prepares Temporary Easements [ROW 761] for culverts, farm field ramps, driveways, and ponds. The Appraiser calculates compensation for the easement.

**Permanent Easements [ROW 017].** Sometimes the LPA acquires property through a Permanent Easement [ROW 017]. The Appraiser calculates compensation for the easement.

### 5.11 Preparation of Appraisals

Acquisition of property generally requires completion of an appraisal to determine the offer of just compensation or FMVO [ROW 205]. Exceptions are low value (\$10,000 or less) simplistic acquisitions acquired through Waiver Valuations (see Section 2 of this Chapter of the LPA Right Of Way Operations Manual for additional information on Waiver Valuation) and donations of property where the appraisal is waived. In all circumstances, the Appraiser prepares either a Short Form Valuation [ROW 023] or a Narrative Appraisal Report [ROW 024] according to the following requirements and procedures.

**Short Form Valuation.**<sup>41</sup> In accordance with federal regulations, the LPA has developed minimum standards for appraisals consistent with established and commonly accepted appraisal practice, for acquisitions, which by virtue of their low value or simplicity do not require the in-depth analysis and presentation necessary a Narrative Appraisal Report [ROW 024].<sup>42</sup> Each appraisal is an independent estimate of value reflecting nationally recognized appraisal standards including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practices. Each appraisal contains sufficient documentation, including valuation data and the Appraiser's analysis of that data, to support the Appraiser's opinion of value.

In the case of some medium value or simplistic acquisitions only a minimum standards appraisal (Short Form Valuation [ROW 023]) is required. Medium value is defined as not exceeding \$10,000. Simplistic acquisitions are defined as those that involve:<sup>43</sup>

- Partial or complete acquisition of vacant unimproved land, or
- Partial acquisitions where damages are minimal and are normal cost-to-cure items.

**Narrative Appraisal Report.** Acquisitions not valued via a Waiver Valuation or a Short Form Valuation [ROW 023] are appraised via a Narrative Appraisal Report [ROW 024].

**All Appraisals.** All of the following items are required for both the Short Form Valuation [ROW 023] and the Narrative Appraisal Report [ROW 024]. The level of detail and specific forms, however, may vary between the two (2) appraisal forms.<sup>44</sup>

- Appraisal Cover Sheet.** The purpose and/or the function of the appraisal and a definition of the estate being appraised.<sup>45</sup> The project and parcel numbers (included on each sheet of the appraisal). A statement of the value of the real property to be acquired and for a partial acquisition, a statement of the value of the damages, if any.
- Certificate of Appraiser.** The effective date of valuation, date of appraisal, signature, and certification of the Appraiser.<sup>46</sup>
- Assumptions and Limiting Conditions.** A statement of the assumptions and limiting conditions affecting the appraisal.<sup>47</sup>
- Site Analysis.** An adequate description of the physical characteristics of the property being appraised and, in the case of a partial acquisition, an adequate description of the remaining property. A statement of the known and observed encumbrances.<sup>48</sup>
- Improvement Analysis (if appropriate).** Description of existing improvements.
- Improvement Sketch(es).** Sketches of improvements to be acquired, or affected by the ROW acquisition, showing dimensions of building (square footage, floor plan (if house)).
- Personal and Real Property.** Real or personal nature of all improvements, even if the improvement does not contribute to value.



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- h. **Highest and Best Use Analysis.** Title information including location, zoning, present use, an analysis of the highest and best use, tax information, and at least a 5 year sales history of the property.<sup>49</sup>
- i. **Value Approaches.** Type of analysis used to develop the Appraiser's opinion of value. When sufficient market sales data is available to reliability support the fair market value for the specific appraisal problem encountered, the Appraiser may elect to use only the market approach.<sup>50</sup> An analysis and reconciliation of approaches to support the Appraiser's opinion of value is required if more than one approach is used.<sup>51</sup>
  - i. **Cost Approach.** Estimates the cost new of existing improvements less depreciation. The depreciated value is then added to the land value derived from the market approach (below).
  - ii. **Market Approach.** Breakdown of comparable sales that were used and the adjustments necessary to derive the value of the subject property. Includes an explanation of correlation of land sales that explains how adjustments within the market approach were made.
  - iii. **Income Approach.** The market rent of the property with a capitalization rate applied to derive a value of the property.
- j. **Reconciliation of the Approach to Value.** Weighs the strengths and weaknesses of each approach to value and selects the strongest approach.<sup>52</sup>
- k. **Allocation of Property Appraised.** A statement of the value of land taking, improvement taking, and damages taking, as applicable.<sup>53</sup>
- l. **Property Sketch.** Hand drawn sketch that shows acquisition area, physical dimensions, topographic features (billboards, driveways, ponds, culverts), location of site improvements, and relationship to proposed highway and right of way.
- m. **Photographs.** Photographs of the subject property and improvements. Interior as well as exterior, if improvement is being affected by acquisition.
- n. **Deed(s).** As provided by LPA ROW Survey, Maps & Deeds Section.
- o. **Other Abstract Documents.** At the Appraiser's discretion, the appraisal may include the following sections of the abstract: Ownership of Title, Tax Abstract, and Deraignment of Title.
- p. **Comparable Sales Brochure Specific Sales.** The appraisal refers to appropriate sales listed in the Comparable Sales Brochure. The appraisal references individual numbers in the Comparable Sales Brochure for a description of comparable sales including relevant physical, legal, and economic factors; parties to the transaction; source and method of financing; and verification by a party involved in the transaction.<sup>54</sup> Comparable sales are used for supporting documentation only and are not included in the appraisal file. See instructions for completing Comparable Sales Brochure in Section 3 of this Chapter of the LPA Right Of Way Operations Manual.

### 5.12 Final Appraisal Document Distribution

Upon completion of the appraisal, the Appraiser gives the original completed appraisal report to the Appraisal Team Leader. The Appraisal Team Leader checks the coding in the Appraisal, updates the Appraisal Status Report, attaches Transfer Form [ROW 719], and sends the Appraisal to the LPA Appraisal Section. The Appraisal is then sent to the Review Appraiser who acknowledges receipt.

## 6. Appraisal Review Procedures

### 6.1 Review Appraiser Field Inspection

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The Review Appraiser visits the site to visually inspect the acquisition area, any improvements, and comparable sales and compare these to the appraisal. Numerous parcels are inspected on a single site visit. The Review Appraiser verifies that all improvements are included in the appraisal sketch or report. Other items that are checked include encumbrances, property lines, historic landmarks, potentially contaminated sites, historic sites, and other environmentally-sensitive areas. All items that can affect the value of the property being acquired and the effect on the remainder are reviewed. If significant errors or omissions are encountered, they are referred to the Appraiser via an Appraisal Deficiency Form for correction.

### **6.2 Appraisal Review Process and Documentation (Desk Review)**

Before acceptance of an appraisal, the Review Appraiser determines that the Appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the Appraiser's opinion of value. The qualifications of the Review Appraiser and the level of explanation of the basis for the Review Appraiser's recommended or approved value depend on the complexity of the appraisal problem.

The Review Appraiser completes the following forms during the review:

- Review Appraiser's Estimate of Fair Market Value [ROW 682]
- FMVO [ROW 205]
- Appraisal Summary [ROW 027]
- Statement of Assumptions and Limiting Conditions of Review Appraiser [component of ROW 024, Appraisal]
- Certificate of Review Appraiser [component of ROW 024, Appraisal]
- Reviewer's Determinations (if applicable)

All Appraisals are examined for the following:

1. Calculations are mathematically correct.
2. Completeness; any Sections marked "non-applicable" are justified.
3. Reasoning is clear and documentation is complete.
4. Assumptions about fact, law, and proposed construction are correct.
5. Logical consistency in evaluation is maintained throughout the area or project.
6. Value conclusions are fully supported and based on accepted appraisal procedure.
7. Proper property owner contact was made.
8. Uneconomic remnants are properly identified.

The Review Appraiser examines all appraisals to ensure that they meet applicable appraisal requirements and, prior to approval or acceptance, obtains necessary corrections or revisions. While the Review Appraiser does not make any substantive changes in the appraisal report, they may correct minor mathematical errors where such errors do not significantly affect the final value conclusions. The Review Appraiser also may supplement the appraisal where minor factual data has been omitted. The Review Appraiser initials and dates any correction and/or factual data supplements to an appraisal report.

### **6.3 Fair Market Value Offer Approval or Independent Estimate**

When establishing the fair market value, the Review Appraiser may approve the value estimated by the Appraiser or make an independent estimate of value. When, in the opinion of the Review Appraiser, the report prepared by the Appraiser represents fair market value the Review Appraiser signs, dates, and approves the appraisal. The fair market value offer is then used as a basis for acquisition. If the Review Appraiser is unable to approve an appraisal as an adequate basis for the establishment of the fair market value and obtaining an additional appraisal is impractical, the Review Appraiser may accept the appraisal but also may develop appraisal documentation to support an approved or recommended value. The

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Review Appraiser's reasons for not approving the original appraisal are documented in the narrative review report.

The Review Appraiser's certification of the approved value of the property is set forth in a signed statement identifying the appraisal reports reviewed and explaining the basis for approval. Damages to any remaining property also are identified in the statement. If the Review Appraiser's established fair market value changes the distribution of values found in the appraisal, the Review Appraiser completes a new Distribution of Final Value Estimate Form, a component of the appraisal [ROW 024].

Based on the value they determine, the Review Appraiser completes the Reviewing Appraiser's Estimate of Fair Market Value [ROW 682] and the FMVO [ROW 205].<sup>55</sup> At a minimum, the FMVO [ROW 205] contains the following:

- i. A statement of the amount offered as fair market value.
- ii. For partial acquisitions, the compensation for the real property to be acquired and a description of damages and appropriate compensation, if any.
- iii. A description and location identification of the real property and the interests in the real property to be acquired.
- iv. An identification of the buildings, structures, and other improvements (including removable buildings, equipment, and trade fixtures) that are considered to be part of the real property for which the fair market value offer is made.
- v. Where appropriate, identifies any separately held ownership interests in the property.

### **6.4 Responding to Review Appraiser Inquiries**

As the Review Appraiser completes their review of the Appraisal, the Review Appraiser may have a Deficiency Report for the Appraiser. Upon receipt of the Deficiency Report from the Review Appraiser, the Appraiser takes the following steps:

- Answers all deficiencies that do not require a written change to the appraisal and initial the deficiency.
- For deficiencies that require a change to the appraisal, make the necessary change, "X-out" the erroneous sheet, and attach the erroneous sheet to the Review Appraiser's Deficiency Report.
- If any part of the appraisal is changed, review the entire report and make any necessary changes.
- If there are unresolved deficiencies between the Appraiser and the Review Appraiser, contact their respective supervisors for resolution.

At this stage of the appraisal process the appraisal shall be approved or accepted.

### **6.5 Notations on Appraisal Cover Sheet<sup>56</sup>**

To facilitate the acquisition process, the Review Appraiser notes the following items on the Appraisal Cover Sheet:

- If relocation is involved in the parcel. This notation quickly informs Acquisition Agents of relocation's involvement.
- If the W-Deed requires an X-deed. Include a copy of the X-Deed in the file.

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### **6.6 Distribution of Approved Appraisal File**

The Review Appraiser provides the original and one (1) copy of the approved Appraisal Report to the Review Appraisal Supervisor. The Review Appraisal Supervisor provides the original accepted appraisal and a copy of the accepted appraisal to the Acquisition Supervisor. The Acquisition Supervisor places the original in the project file.

The Acquisition Supervisor copies and distributes appraisals to Acquisition Agents for their assigned parcels. The Acquisition Supervisor also provides copies of appraisals to the Relocation Supervisor and the Property Management Coordinator.

The Appraisal Report and workfile must be retained by the LPA for a period of at least five (5) years after the preparation or at least two (2) years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.<sup>57</sup>

### **6.7 Updating the Offer of Just Compensation<sup>58</sup>**

If the information presented by the property owner (including the property owner's appraisal), or a material change in the character or condition of the property, indicates the need for a new appraisal, or if a significant delay has occurred since the time of the appraisal of the property, the appraisal is updated or a new appraisal is obtained. All relevant facts and circumstances of such new information or material change in the character or condition of property are considered by a staff Review Appraiser or an LPA official delegated the authority for the establishment of just compensation.

If the latest appraisal information indicates that a change in the purchase offer is warranted, the LPA promptly reestablishes just compensation and offers that amount to the property owner in writing.

### **6.8 Administrative Settlement**

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.

All relevant facts and circumstances should be considered by an LPA official delegated this authority. Appraisers, including Review Appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.<sup>59</sup>

## **7. Appraisals for Court**

This section details the process for completing appraisals in preparation for eminent domain court testimony.

### **7.1 Receipt of Appraisal for Court Request**

The LPA ROW Legal Section initiates the appraisal process for condemnation cases. The LPA ROW Legal Section submits a Court Appraisal Package to the Appraisal Officer requesting that an appraisal for Court be completed in 60 days. The Appraisal Officer provides this request to the Appraiser requesting the Appraiser prepare for court testimony.

### **7.2 Materials Furnished to the Appraiser**

The Court Appraisal Package furnished to the Appraiser contains the following:

1. Court appraisal memorandum
2. Exhibit A (most current legal description of the acquisition area)

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3. Two (2) ROW Acquisition Map (most current available, should match the acreage on the deed)
4. Discovery Material Form (blank)
5. Copy of Appraiser's Condemnation Status Report

### **7.3 Initiation of the Appraisal for Condemnation Cases**

Upon receipt of the Court Appraisal Package, the Appraiser conducts the following activities:

- Notes the appraisal due date and the filing date;
- Consults the Appraisal Supervisor about schedule to enable completion by the due date;
- Verifies that the acreage on the map matches the acreage on the deed; and
- Obtains a copy of and updates the Record Search Sheets [ROW 717] in the Comparable Sales Brochure.

### **7.4 Reviews Comparable Sales Brochure/Record Search Sheets**

The Appraiser reviews the Record Search Sheets [ROW 717] to determine the last date that records were run on the original project. If other parcels on the same project have been recommended for condemnation, the Appraiser contacts the Appraisers on those parcels to see if they have updated the records. The Appraiser also checks with the other Appraisers about sales they may have already confirmed. The date of update must be the same as the date of filing the condemnation case in the courts.

The Appraiser also checks for local zoning changes that may affect the highest and best use of the property. Any changes are available in the appropriate zoning office.

Upon completion of the Comparable Sales Brochure update, the Appraiser prepares a New Sales Memorandum listing the sale number of each new sale confirmed, the date of the record search, and an overall listing of the area searched (e.g., all of Township 7 North Range 4 East, and Sections 4 thru 10 in Township 7 North Range 3 East; or all lands in Section 34 lying south of the ICGRR). The New Sales Memorandum provides a quick reference to any Appraiser who may later do another update. The New Sales Memorandum is sent to the Appraisal Supervisor who distributes it to applicable Appraisers.<sup>60</sup>

If the Appraiser expects to testify to new comparable sales found in the update process, the Appraiser notes these sales in the Court Appraisal Memorandum or Final Reconciliation of Value [a component of ROW 024, Appraisal], even if the unit value of the appraisal did not change.

### **7.5 Parcel Inspection**

The Appraiser of record must be the Appraiser who physically inspects the subject property during the court appraisal process. At the site, the Appraiser thoroughly reviews the original appraisal and makes a visual inspection of the subject property. If measurements have not been taken, the Appraiser takes measurements. The Appraiser completes the following items at the parcel inspection:

- Record all items on site that vary from the original appraisal. Review the appraisal for missing or incomplete data that may be the subject of questions from the property owner's attorney, e.g. distance from original and proposed ROW to residence, changes in elevation between old road and new, old sheds or outbuildings not visible from the roads or the residence, relocated driveways, improvements to structures, new roofing, length of driveway, etc.
- Note any physical changes adjoining or in close proximity, i.e., sewer service now in place where it did not exist, new houses, new businesses, demolished structures, power line relocations, etc.

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### 7.6 Prepare Appraisal for Eminent Domain Court Testimony

The Appraiser prepares an appraisal for eminent domain court testimony. The date of value for the appraisal must be the date of filing. Confirmation with the Trial Attorney is required. The following items are provided to the Appraisal Supervisor who forwards them to the Review Appraiser:

- Court Appraisal Memorandum
- Purpose of court appraisal (eminent domain or ROW revisions)
- ROW Acquisition Map
- Copy of original appraisal
- Court Appraisal Report, including, but not limited to the – deed description, Comparable Sales Data Sheets [ROW 025], and Discovery Material Form

The appraisal for court must be a total “Before and After” appraisal. If a total “Before and After” appraisal was not done originally, then it must be prepared at this time. To complete a total “Before and After” appraisal, value all improvements on the subject property. The total “Before and After” Appraisal must contain the following:

- Memorandum or letter summarizing the changes
- Discovery Material Form, completed and attached to the Appraisal
- Applicable appraisal forms
- One (1) copy of the ROW Acquisition Map or condemnation plat

If a complete “Before and After” appraisal was completed as part of the original appraisal, an abbreviated appraisal may be submitted. It must contain the following:

- Memorandum or letter summarizing the changes
- Discovery Material Form, completed and attached to the Appraisal
- Title Page
- Allocation Page
- Certification Page
- Summary of “Before and After Value”
- One (1) copy of the ROW Acquisition Map or condemnation plat

Upon completion of the court appraisal, be sure to compare and correct any and all changes from the original appraisal including the following:

- |                               |  |
|-------------------------------|--|
| • Acreage of site             | • Improvement(s) dimensions              |
| • Condition of improvement(s) | • Clearance from right of way            |
| • Acquisition acreage         | • Remainder acreage                      |
| • Access to sewer             | • Availability of utilities              |
| • Highest and best use        | • New sales transactions                 |
| • Leases                      | • Timber values + or -                   |
| • Fence quotes                | • Marshal & Swift estimates              |
| • Zoning                      | • Subject acreage on sales grid          |
| • Crops in field              | • Local economic conditions              |
| • Change in sales used        | • Sales used in reconciliation           |
| • Adj.'s explanation          | • Owner's address as of filing date      |
| • Inspection date             | • Major local events (e.g., new factory) |

### 7.7 Court Appraisal Review

Upon completion of the court appraisal, the Appraiser attaches a memorandum on top, the Discovery Material Form with attachments, to the court appraisal, and sends all documents to

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the Appraisal Officer. The Appraisal Officer sends the court appraisal to the Review Appraisal Supervisor. The court appraisal is reviewed and approved for court testimony.

If the Review Appraiser finds deficiencies in the court appraisal, the court appraisal and the Discovery Material Form are sent back to the Appraiser to make the changes. Following completion of the requested changes, the Review Appraiser re-submits the appraisal update and Discovery Material Form to the Appraisal Officer.

Once the Appraisal is reviewed and accepted for court testimony the Appraisal along with the review are returned to the Appraisal Officer.

### **7.8 Distribution of Reviewed Court Appraisal**

Once the court appraisal has been reviewed and approved for court testimony, the Appraisal Officer sends the Court Appraisal and Discovery Material Form to the LPA ROW Legal Section to prepare and send the Statement of Value to the assigned Trial Attorney. The final court appraisal is filed in the LPA ROW Division File Room by the LPA ROW Legal Section.

If the LPA Trial Attorney contacts the Appraiser to prepare for court testimony and/or prepare an appraisal, the Appraiser does not proceed until they have contacted the Appraisal Officer. The Appraisal requests that the Trial Attorney contact the LPA ROW Legal Section to provide information regarding the trial date, discovery, and statement of value due dates.

Following completion of the court appraisal, the Review Appraiser provides the original accepted appraisal and one (1) copy of the accepted court appraisal to the Acquisition Supervisor. The Acquisition Supervisor places the original in the project file.

The Acquisition Supervisor copies and distributes appraisals to Acquisition Agents for their assigned parcels. The Acquisition Supervisor also provides copies of appraisals to the Relocation Supervisor and the Property Management Coordinator.

The Appraisal Report and workfile must be retained by the LPA for a period of at least five (5) years after the preparation or at least two (2) years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.<sup>61</sup>

### **7.9 Additional Guidelines for Appraisers Completing Appraisal Updates for Court**

- If the LPA Trial Attorney contacts the Appraiser to prepare for court testimony and/or prepare an appraisal, the Appraiser does not proceed until they have contacted the Appraisal Officer. The Appraisal requests that the Trial Attorney contact the LPA ROW Legal Section to provide information regarding the trial date, discovery, and statement of value due dates.
- Do not contact the property owner without consent from opposing counsel obtained through the LPA Trial Attorney. If the Appraiser needs to inspect the subject property, the Appraiser contacts the LPA's Trial Attorney to arrange a day and time with the opposing side.
- Do not answer any questions from the property owner concerning the original appraisal. If the property owner has any questions, the Appraiser refers the property owner to the LPA Trial Attorney or to the property owner's attorney, if so represented.

## **8. Condemnation Trial Procedures for Appraisers**

### **8.1 Pre-trial Meeting**

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The Trial Attorney arranges a pre-trial meeting to walk through the specifics of the case and discuss testimony. This meeting includes all witnesses including an engineering witness and a value witness. Other specialty witnesses may be called on an as-needed basis. The witnesses should be present at the pretrial meeting together. The pretrial meeting is held after the appraisal court update has been approved.

### 8.2 Post-trial Activities

After trial, the Appraiser prepares a trial report for the Appraisal Officer with the results of the trial.

## 9. Ongoing Appraisal Procedures

### 9.1 Appraisal Weekly Status Report

The Appraisal Team Leader prepares weekly Appraisal Status Reports to the Appraisal Supervisor and provides copies to the Appraisal Officer and LPA Appraisal Section Secretary. The Appraisal Status Reports include information on parcels worked on and completed that week and an itinerary for each Appraiser for the following week.

### 9.2 Contact Report<sup>62</sup>

Each Appraiser maintains a contact report as part of the appraisal document for each parcel they are appraising. The contact report documents interactions and conversations with the property owner. It is not, however, a verbatim record of events. After each contact with the property owner, the Appraiser records the following information in the contact report:

- Confirmation of the names and addresses of all property owners and lien holders (initial contact),
- Date and place of contact,
- Persons present, and
- All other pertinent data.

All correspondence between the Appraiser and the property owner(s) is attached to the contact report. The contact report is signed and dated by the Appraiser. The contact report is part of the appraisal. Each appraiser keeps a contact report as part of the appraisal they are preparing.

### 9.3 Hostile Landowner

LPA staff members do not go onto the property of a property owner that has forbidden access to their property. If the property owner refuses to give permission to enter the property or is verbally hostile toward LPA staff, explain to the property owner that Appraiser cannot come onto the property and an appraisal will be completed from the public right of way. If a hostile landowner is encountered, the Appraiser gathers all available information on the improvements from the property cards (available from count for assessors office and provides property measurements, etc.) and, if available, the County Tax Assessor's Office.

All hostile property owners are reported to the Appraisal Officer and District Coordinator immediately. The Appraiser also documents the hostile contact on the contact report of the appraisal so that subsequent Field Agents are aware of hostile landowner. The Appraiser also provides a written or verbal notice to other Field Agents about the hostile landowner.

### 9.4 Adjusting Deeds for Additional Information/Owners<sup>63</sup>

Whenever new information is found for the deed, such as a deceased party, the abstract and deed are updated. The Appraiser provides all updated deed information in a memorandum to the Appraisal Supervisor who distributes the memorandum to the LPA Title Section.

### 9.5 Reporting Potential ROW Acquisition Map Inaccuracies



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- If an Appraiser notes an error on the ROW Acquisition Map (i.e., missing acquisition acreage, remainder acreage, missing topo, property lines, etc.), the Appraiser drafts a memorandum to the Appraisal Supervisor describing the problem. The Appraisal Supervisor forwards the memorandum to the LPA ROW Survey, Maps & Deeds section and informs other LPA ROW Sections, as appropriate.
- Normally, the Appraiser drafts one (1) memorandum for each parcel number involved. If the problem is similar across several files (i.e., missing remainder acreages on 6 files), however, it is acceptable to describe the general problem and then list all file numbers that are missing the remainder acreage in a single memorandum. The practice of listing problems for multiple files on a single memorandum, however, is limited to the initial preparation stages of the project. In later project stages, a single memorandum is required for each ROW Acquisition Map problem encountered.
- If the project is a rush, call the Appraisal Supervisor with the error information, but always follow-up the phone call with a memorandum.

### **9.6 Property Owner Appraisal**

If a property owner provides a privately obtained appraisal to a ROW Agent for consideration, the ROW Agent takes the following actions:

1. Sends privately obtained appraisal via memorandum to the Review Appraiser
2. Sends a copy of transmittal memorandum to the Acquisition Supervisor.
3. Does not make copies of the privately obtained appraisal, this is a proprietary document.
4. When the appraisal is returned from the Review Appraiser, returns the private appraisal to the property owner in person and in original condition
5. Provides the property owner with a verbal explanation of the LPA's findings and status of the decision.

## **10. Appraisal Process Completion**

### **10.1 Appraisal Project Team Leader Closeout Responsibilities**

As completion of the appraisal process approaches, the Appraisal Team Leader completes the items on the Appraisal Team Leader Checklist. The Appraisal Team Leader makes a copy of this list and initials each step as it is completed. This initialed list, when complete, is given to the Appraisal Officer in combination with the Comparable Sales Brochure.

1. As a project nears completion, maintain closer daily contact with Appraisers to spot potential problems or delays.
2. Review Appraisal Status Report to ensure all appraisals are completed.
3. Check with each Appraiser to see that there are no additional files or appraisals returned by the Review Appraiser in their possession.
4. Check with the Review Appraiser to see that all appraisals are accounted for.
5. Reconcile revisions, Appraiser information, and Review Appraiser information with the Appraisal Status Report.
6. Contact the Appraisal Supervisor to reconcile the Appraisal Status Report.
7. Check with each Appraiser for new sales information not written up.
8. Inspect the Comparable Sales Brochure to insure all Comparable Sales Data Sheets [ROW 025] are complete and legible.
9. Ensure that the Comparable Sales Brochure contains the following:
  - Master location map

## Appraisal, Appraisal Review, and Waiver Valuation

- List of contractors and copies of their vendor forms
  - Three-ring binder with plastic pockets containing Comparable Sales Data Sheets [ROW 025], property analysis forms [a component of ROW 024, Appraisal], sketch, special notes, and description of improvements
  - Separate bound copy of all deeds
  - A copy of your reconciled final project status report and any explanatory notes that accompany it
  - All original Record Search Lists [ROW 717]
  - Original, fencing price quote lists
10. Ensure that all Appraisers have an up-to-date copy of the Comparable Sales Brochure and accompanying maps and materials.
  11. Review all plans, maps, price quotes, and notes posted in the office. Discard all that are not needed as part of the Comparable Sales Brochure.
  12. Roll up aerial photos (photo side in), label with project number, county, road, and date and provide them to the Appraisal Officer.
  13. Physically deliver the Comparable Sales Brochure and other materials to the Appraisal Officer.
  14. Check to see that all files have been coded. Review and reconcile those that have not been coded. Write up a memorandum listing any outstanding file numbers that show up in this reconciliation describing their status.

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<sup>1</sup> USPAP, The Appraisal Foundation, Washington, D.C.

<sup>2</sup> *MSHC v. Hillman*, 189 Miss. 850, 198 So. 565, (1940) *Trustees of Wade Baptist Church v. MSHC*, 469 So. 2d 1241, 1244 (Miss. 1985); *Sanderson Farms, Inc. v. MSHC*, 324 So. 2d 243, 244 (Miss. 1975); *MSHC v. Hancock*, 309 So. 2d 867, 871 (Miss. 1975); *MSHC v. Hall*, 174 So. 2d 488, 492 (Miss. 1965);

<sup>3</sup> Mississippi Code 1972 § 11-27-21; *Pearl River Water Supply District v. Wood*, 252 Miss. 580, 172 So. 2d 196 (1965); *MSHC v. Hillman*, 189 Miss. 850, 198 So. 565 (1940); *MSHC v. Hancock*, 309 So.2d 867 (Miss. 1975)

<sup>4</sup> Mississippi Code 1972 § 43-37-3

<sup>5</sup> Mississippi Code 1972 § 11-27-21

<sup>6</sup> Mississippi Code 1972 § 11-27-21; *Pearl River Water Supply District v. Wood*, 252 Miss. 580, 172 So. 2d 196 (1965); *MSHC v. Hillman*, 189 Miss. 850, 198 So. 565 (1940); *MSHC v. Hancock*, 309 So.2d 867 (Miss. 1975)

<sup>7</sup> *Potters II v. State Highway Commission*, 608 So.2d at 1234

<sup>8</sup> 49 CFR 24.103(e).

<sup>9</sup> 49 CFR 24.103(a).

<sup>10</sup> 49 CFR 24.102(c).

<sup>11</sup> MDOT Policy, 2002.

<sup>12</sup> 49 CFR 24.102(c)(2).

<sup>13</sup> 49 CFR 24.104.

<sup>14</sup> 49 CFR 24.104

<sup>15</sup> MDOT Policy, 2002.

<sup>16</sup> MDOT Policy, 2002.

<sup>17</sup> 49 CFR 24.104.

<sup>18</sup> 49 CFR 24.102(c).

<sup>19</sup> 49 CFR 24.102(c)(2).

<sup>20</sup> MDOT Policy, 2002.

<sup>21</sup> 49 CFR 24.102(c)(2)

<sup>22</sup> 49 CFR 24.102(b).

<sup>23</sup> 49 CFR 24.102(c).

<sup>24</sup> MDOT Policy, 2002. To minimize burden on displacee in accordance with 49 CFR 24.205(d).

<sup>25</sup> 49 CFR 24.5.

<sup>26</sup> MDOT Policy, 2002.

<sup>27</sup> 49 CFR 24.5.

<sup>28</sup> MDOT Policy, 2002.

- <sup>29</sup> MDOT Policy, 2002. Moved from Property Management so every property is contacted instead of just those with improvements.
- <sup>30</sup> 49 CFR 24.205(c)(2)(i)(c)
- <sup>31</sup> MDOT Policy, 2002.
- <sup>32</sup> 49 CFR 24.103.
- <sup>33</sup> Mississippi Code 1972 § 43-37-3(c)
- <sup>34</sup> MDOT Policy, 2002.
- <sup>35</sup> *Emerson v. MSHC*, 208 So.2d 441; Additional citations for this principle included *MSHC v. Strong*, 240 Miss. 756, 129 So.2d 349 (1961); *MSHC v. Hall*, 252 Miss. 863, 174 So.2d 488 (1965); *MSHC v. Colonial Inn, Inc.*, 246 Miss. 422, 149 So.2d 851 (1963).
- <sup>36</sup> *Oughton v. Gaddis*, 783 So.2d 390 (1996)
- <sup>37</sup> 23 CFR 710
- <sup>38</sup> 49 CFR 24.102(e)(1).
- <sup>39</sup> MDOT Policy, 2002.
- <sup>40</sup> MDOT Policy, 2002.
- <sup>41</sup> 49 CFR 24.104.
- <sup>42</sup> 49 CFR 24.103.
- <sup>43</sup> MDOT Policy, 2002.
- <sup>44</sup> 49 CFR 24.102(e)
- <sup>45</sup> 49 CFR 24.103 (1).
- <sup>46</sup> 49 CFR 24.103 (6).
- <sup>47</sup> 49 CFR 24.103 (1).
- <sup>48</sup> 49 CFR 24.103 (2).
- <sup>49</sup> 49 CFR 24.103 (2).
- <sup>50</sup> 49 CFR 24.103 (3).
- <sup>51</sup> 49 CFR 24.103 (3).
- <sup>52</sup> 49 CFR 24.103 (3).
- <sup>53</sup> 49 CFR 24.103 (5).
- <sup>54</sup> 49 CFR 24.103 (4).
- <sup>55</sup> MDOT Policy, 2002. Formerly the FMVO [ROW 205] was an Acquisition Agent responsibility.
- <sup>56</sup> MDOT Policy, 2002.
- <sup>57</sup> USPAP standard.
- <sup>58</sup> 49 CFR 24.102(g)
- <sup>59</sup> 49 CFR 24.102(i) Appendix
- <sup>60</sup> MDOT Policy, 2002.
- <sup>61</sup> USPAP standard.
- <sup>62</sup> MDOT Policy, 2002.
- <sup>63</sup> MDOT Policy, 2002.

## Definitions

**SUBJECT:** Definitions

**PURPOSE:** To define terms used in the LPA Right of Way Manual.

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### DEFINITIONS

1. Access Rights – The right of ingress to and egress from a property that abuts a street or highway.
2. Acquisition – Activities to obtain an interest in, and possession of, real property.
3. Agency – The State of Mississippi, Mississippi Department of Transportation, State Agency, Local Public Agency, or person receiving federal financial assistance through the Mississippi Department of Transportation or any Federal Agency for a project involving the acquisition of real property or the displacement of a person.
  - (a) Acquiring Agency – An Agency, as defined in this section, other entity, or person, which has the authority to acquire real property by eminent domain under State or Federal law, and a state agency or person which does not have such authority.
  - (b) Displacing Agency – Any Agency carrying out a project or program with Federal financial assistance or under any state law, which causes a person to be a displaced person.
  - (c) Federal Agency – Any department, agency or instrumentality in the executive branch of the Government, any wholly-owned government corporation, the Federal Highway Administration, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal Laws.
  - (d) State Agency – Any department, agency or instrumentality of a State or a political subdivision of a State, any department, agency or instrumentality of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under state law.
4. Air Rights – Real Property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.
5. Airspace – That space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.
6. Appraisal – A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
7. Business – A lawful activity, except a farm operation, that is conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacturing, processing and/or marketing of products, commodities and/or other personal property; or primarily for the sale of services to the public; or primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or by a non-profit organization that has established its nonprofit status under applicable federal or state law.
8. Comparable Replacement Dwelling – A dwelling which meets the following criteria, as set forth in 49 CFR 24.2:
  - (a) Decent, safe and sanitary as described in 49 CFR 24.2(a)(8);

## Definitions

- (b) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
- (c) Adequate in size to accommodate the occupants;
- (d) In an area not subject to unreasonable adverse environmental conditions;
- (e) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- (f) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;
- (g) Currently available to the displaced person on the private market except as provided in 49 CFR 24.2(a)(6)(ix); and
- (h) Within the financial means of the displaced person:
  - (1) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in 49 CFR 24.401(c) and in the Relocation Section of the Right of Way Operations Manual, all increased mortgage interest costs as described at 49 CFR 24.401(d) and in the Relocation Section of the Right of Way Operations Manual and all incidental expenses as described at 49 CFR 24.401(e) and in the Relocation Section of the Right of Way Operations Manual, plus any additional amount required to be paid under 49 CFR 24.404, Replacement housing of last resort.
  - (2) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at 49 CFR 24.402(b)(2) and in the Relocation Section of the Right of Way Operations Manual. For a person who paid little or no rent before displacement, the base market rent of the displacement dwelling, not to exceed 30 percent of the displaced family's gross income, shall be used when computing costs.
  - (3) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 49 CFR 24.402(b)(2) and in the Relocation Section of the Right of Way Operations Manual. Such

## Definitions

rental assistance must be paid under 49 CFR 24.404, Replacement housing of last resort.

- (i) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

9. Condemnation – The process of taking private property for public use or purpose through the power of eminent domain. Unlike police power, such as the denial of a zoning change, exercising the power of eminent domain require just compensation be paid by the condemnor to the condemnee. The amount of the just compensation is generally considered to be the appraised market value of the property as of the date of the condemnation.

10. Contributes Materially – During the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation had average annual gross receipts of at least \$5000, or had average annual net earnings of at least \$1000, or contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates inequity or hardship, the Agency may approve the use of other criteria as determined appropriate.

11. Cost of Utility Relocation – The entire amount paid by or on behalf of the utility property attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

12. Cost of Utility Removal – The amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

13. Cost of Utility Salvage – The amount expended to restore salvaged utility property to usable condition after its removal.

14. Damages – The loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner's property is acquired.

15. Date of Displacement – The date on which the displacee moves from the acquired parcel or the date on which he is required to move, whichever is earlier.

16. Decent, Safe and Sanitary Dwelling – A dwelling which meets applicable housing and occupancy codes; and unless waived for good cause by the federal agency funding the project, the following criteria:

- (a) Is structurally sound, weather-tight, and in good repair.
- (b) Contains a safe and adequate electrical system.
- (c) Contains a heating system capable of sustaining a healthful temperature of approximately 70 degrees.
- (d) Is adequate in size with respect to the number of room and area of living space to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to potable hot and cold water and to a

## Definitions

sanitary sewage system and adequate space and utility service connections for a stove and refrigerator.

- (e) Provides unobstructed, safe egress to ground level. If the replacement dwelling unit is on the second story or above with access directly from or through a common corridor, the common coordinator must have at least two means of egress.
- (f) For a handicapped displace, is free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by a displaced person who is handicapped.

17. Displaced Person – The term “displaced person” means any person who moves from real property or moves his or her personal property from real property for one or more of the following reasons:

- (a) As a direct result of the Agency's acquisition of such real property in whole or in part. This includes any person who moves from the real property as a result of the initiation of negotiations. (In the case of a partial acquisition, the Agency shall determine whether the person is displaced as a direct result of the partial acquisition).
- (b) As a result of a written order from the acquiring Agency to vacate such real property, or as a direct of a written notice of intent to acquire.
- (c) As a result of rehabilitation or demolition for a project.
- (d) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. Eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services and moving expense, excluding re-establishment and fixed payment benefits for businesses, farms and nonprofit organizations.
- (e) See also “Persons Not Displaced” as defined in this Standard Operating Procedure.

18. Disposal – The sale of real property or rights therein, including access or air rights, when no longer needed for highway right-of-way or other uses eligible for funding under title 23 of the United States Code.

19. Donation – The voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

20. Dwelling – The place of permanent or custom or law, including single family house, a single family unit in two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit (a sleeping room); a mobile home, or any other residential unit. Place of “permanent or customary and usual abode” is defined by the Attorney General of the State of Mississippi as follows:

That one certain dwelling place or place of residence which a person, with the present intention of making it and using it as a permanent home for an indefinite or unlimited period of time, has established occupies and uses as such a person's principal or primary home and customary and usual permanent home address, being the place of habitation to which such person, following a temporary or special absence therefrom for reasons of employment, pleasure, illness, military service, or otherwise, normally and usually return to live such person's private life. A person cannot have but one such habitation at a time even though from time to time during a lifetime a person can abandon a former such habitation and establish a current one. It includes any type of facility which is actually established, occupied, and used by such person of living, provided such person is a legal possession thereof, whether by ownership, lease, rental arrangement, or other legal means.

## Definitions

21. Early Acquisition – The acquisition of real property by State or local governments in advance of Federal authorization or agreement.

22. Easement – An interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

23. Eminent Domain – The right of government to take private property for public use upon the payment of just compensation.

24. Fair Market Value – The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from the seller to buyer under conditions whereby: buyer and seller are typically motivated; both parties are well informed or well advised, and acting in what they consider their best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

25. Farm Operation – Any activity conducted solely or primarily for the production of one or more agricultural products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

26. Federal-Aid Highways – Highways on the Federal-aid highway systems and all other public roads.

27. Federal Financial Assistance – Any federal grant, loan, or contribution, except a federal guarantee or insurance, and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

28. Initiation of Negotiations – The delivery of the initial written offer by the Agency to the owner or owner's representative real property for a project for the amount determined to be just compensation. In case of a permanent relocation to protect the public health and welfare, the "initiation of negotiations" means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation is announced. However, in any case where a person moves after the Agency issues a notice of its intent to acquire the real property, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property.

29. Just Compensation – The compensation for property acquired under eminent domain or by agreement that places a property owner in the same position as before the property is taken. It is usually the fair market value of the property acquired.

30. Lead Agency – The Mississippi Department of Transportation.

31. Local Public Agency – Any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

32. Market Value – The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms for which the appraised property will sell in a competitive market value under all conditions requisite to fair sale with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress.



## Definitions

33. Mortgage – Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State of Mississippi, together with the credit instruments, if any secured thereby.

34. NHS – The National Highway System as defined in 23 USC 103(b).

35. Nonprofit Organization – An organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 USC 501).

36. Notice of Intent – To acquire or Notice of Eligibility for Relocation Assistance – Written notice to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation assistance benefits prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance.

37. Oversight Agreement – The project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 USC 106(c)(3).

38. Owner of Displacement Dwelling – A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interest in real property acquired for a project:

- (a) Fee title, a life estate, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition.
- (b) An interest in cooperative housing project which includes the right to occupy a dwelling.
- (c) A contract to purchase any of the interest or estates described in subparagraphs (a) or (b) of this paragraph.
- (d) Any other interest including a partial interest which in the judgment of the Agency warrants consideration as ownership.

39. Person – Any individual, family partnership, corporation or association.

40. Persons Not Displaced – The following is a nonexclusive listing of persons who do not qualify as displaced persons under these regulations:

- (a) A person who moves before the initiation of negotiations, unless the agency determines that the person was displaced as a direct result of the program or project.
- (b) A person who moves initially enters to relocate permanently as a direct result of the project. Such determination shall be made by the Agency funding the project.
- (c) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project. If the occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporary occupied housing must be decent, safe and sanitary and the temporarily displaced person must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

## Definitions

- (d) A person who after receiving a notice of relocation eligibility is notified in writing that he or she will not be displaced. This notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person(s) for any expenses incurred to satisfy binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.
- (e) An owner-occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. Any resulting displacement of a tenant is subject to these regulations.
- (f) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act.
- (g) A person whom the Agency determines is not displaced as a direct result of a partial acquisition.
- (h) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency.
- (i) A person who is determined to be in unlawful occupancy, as defined in this Standard Operating Procedure, prior to the initiation of negotiations, or a person who has been evicted for cause under applicable law.

41. Program or Project – Any activity or series of activities undertaken by an Agency with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding guidelines.

42. Project – An undertaking by a State highway department or its subrecipient for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.

43. Real Estate – An identified parcel or tract of land, or interest therein, including improvements, if any.

44. Real Property – Rights to use land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

45. Relinquishment – The conveyance of a portion of a highway right-of-way or facility by a State highway department to another government agency for continued transportation use.

46. Right-of-Way – Real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

47. Right-of-Way Incidentals – Charges that are incurred by the ROW Title Section, ROW Survey, Maps & Deeds Section or the ROW Property Management Section, as a result of title abstracting, the preparation of surveys, maps, and deeds, or determining if property has been contaminated. These charges include but are not limited to, labor, travel, consultants, and other related costs. A Project cannot be funded until maps and deeds are complete, so these incidental charges are paid from the Preliminary Engineering (PE) detail of the project.

48. Salvage Value – The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being

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used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

49. Settlement – The result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

- (a) An administrative settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.
- (b) A legal settlement is a settlement reached by a responsible State legal representative after filing a condemnation proceeding, including stipulated settlements approved by the court in which the condemnation action had been filed.
- (c) A court settlement or court award is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

50. Small Business – A business having at least one but not more than 500 employees working at the site being acquired or displaced by a program or project.

51. State – Any of the several States of the United States, the District of Columbia, the commonwealth of Puerto Rico, and territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

52. State Transportation Department (STD) – The State highway department, transportation department, or other State transportation agency or commission to which title 23 of the United States Code funds are apportioned.

53. Uneconomic Remnant – A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value to the owner.

54. Uniform Act – The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; USC 4601 et. seq.; Pub. L.91-646), and amendments thereto.

55. Unlawful Occupancy – A person who has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations, or who is determined by the Agency to be a squatter who is occupying the property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

56. Utility – A privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

57. Utility Costs – Expenses for heat, lights, water and sewer.

58. Utility Facility – Any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment or other property associated with the operation, maintenance, or repair of any such system. A utility system may be publicly, privately, or cooperatively owned.

## Definitions

59. Utility Relocation – The adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on new location; moving rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

**Local Public Agency  
Right of Way Operations Manual**

**District Coordinator**

The following procedures document the responsibilities of Right of Way District Coordinators. Right of Way District Coordinators serve as liaisons between their District, District Engineer, ROW Division Administrator, Local Public Agencies, public, property owners, and Field Agents. Right of Way District Coordinators coordinate right of way activities, assess and report on right of way project progress, and provide input and assistance to right of way project problems. District Coordinators will have oversight over all Local Public Agency projects.

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**1. Project Oversight**

**1.1 Preliminary Project Coordination Activities**

Upon receipt of the first set of ROW Acquisition Plans, the LPA Appraisal Officer sends a notice to the District Coordinator to let them know what the next project is and when it will be starting. Based on this notification, the District Coordinator conducts their responsibilities at the beginning of each project which include the following:

- Works with the LPA District Engineer to ensure the project is staked just prior to Appraisers beginning the appraisal process in the field; and
- Obtains proper maps and reviews the project in the office and in the field (prior to the project acquisition kickoff meeting).

**1.2 Project Acquisition Kickoff Meeting**

Upon receipt of the project start date, the District Coordinator schedules a “project acquisition kickoff meeting” through appropriate LPA ROW Section Head. The project acquisition kickoff meeting is a short meeting of the entire acquisition project team to establish the basic project objectives.

Each Section Head determines the appropriate LPA personnel to invite to the project acquisition kickoff meeting. Invited personnel may include Acquisition Agents, Relocation Agents, Appraisers, Property Management Agents, ROW Engineering Technicians, and FHWA.

The project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project. The topics discussed include the following:

1. Review project files
2. Project start and end dates, if known
3. Contract letting schedule and desired possession date
4. Project purpose and benefits
5. Contact information for:
  - Project Engineer
  - Relocation Agent(s)
  - Acquisition Agent(s)
  - Review Appraiser
  - Appraisal Team Leader
  - Property Management Agent(s)
  - Other acquisition team members, as appropriate
6. Review of maps

## **District Coordinator**

7. Discuss Staffing
8. Establish timelines
9. Tour the project by map, vehicle, and/or foot to become familiar with and oriented to the proposed highway's route and the acquisition areas. In particular, look for potential property owner and displacee issues.
10. Identify priority parcels. Priority parcels may include those involving relocation of displacees, relocation of utilities, or other complex parcels (such as, those involving improvements, hazardous waste, government agencies, partnerships, businesses, churches, casinos, associations, estates, multiple owners, and out-of-state owners). The Appraisal Supervisor, in coordination with the Appraisal Team Leader and the District Coordinator, determines the order in which parcels are appraised and acquired.
11. Number and size of underground storage tanks as well as any other information on potentially contaminated sites.
12. Review environmental commitments.
13. Review special construction features.

### **1.3 Project Status Reports**

Based on meetings and the status reports provided to the District Coordinator, the District Coordinator provides a Project Status Report to the LPA concerning all right of way activities taking place on active right of way projects. District Coordinator Project Status Reports may be verbal or written. District Coordinators monitor the progress of right of way acquisition and displacee relocation and advise the LPA of any required schedule changes. The District Coordinator provides a written weekly status report on projects.

### **1.4 Disposal of Improvements by Demolition**

If an improvement requires disposal via demolition, and the LPA Property Management Section does not complete demolition prior to contract letting, demolition may be included in the construction contract. Improvements not removed by abatement/demolition contracts or other means are to be put in the construction contract 30 days prior to the project advertising date.

The LPA ROW Environmental Coordinator notifies the District Coordinator when asbestos abatement is complete or that asbestos abatement is not required. If asbestos abatement is required, the LPA Property Management Section ensures services are rendered and abatement is completed. Upon receipt of the Asbestos Abatement Complete (or not required) Notification from the LPA Property Management Section and the Vacancy Memorandum from Relocation, the District Coordinator notifies the LPA of the vacancy and demolition of the improvement is addressed in the construction contract.

### **1.5 LPA Project Oversight**

District Coordinators will have oversight over all Local Public Agency projects. This oversight includes, but is not limited to the following:

- Ensuring all rights of way and legal rights of entry have been acquired;
- Ensuring there are no potentially contaminated sites;
- Ensuring that there are no encroachments;
- Ensuring that there are no known utilities in conflict with the project; and
- Ensuring there are no asbestos contaminated buildings that need to be removed.

**Local Public Agency  
Right of Way Operations Manual**

**Environmental**

The following procedures document the responsibilities of the LPA ROW Division Property Management Section for identification of environmentally sensitive, historical, and potentially contaminated sites and, if needed, remediation of contaminated sites prior to highway construction.

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**1. General Environmental Policies**

The environmental duties of the LPA ROW Division's property management function include the inspection of the project area to identify potentially contaminated sites or other environmentally-sensitive areas, arranging for, or conducting, environmental testing, and, when warranted, determination of the extent of contamination and reporting of such contamination to relevant regulatory agencies (such activities are charged as ROW Incidentals, as defined in the Definitions Section of the LPA ROW Operations Manual). The LPA Property Management Section coordinates with the LPA Environmental Division regarding the preparation of environmental documents and the identification of environmentally sensitive areas and the Mississippi Department of Environmental Quality (MDEQ) regarding any remediation required on contaminated properties acquired by the LPA.

**1.1 Inspect for Potentially Contaminated Sites**

When practical, the LPA avoids contaminated sites in its acquisition of right of way. Early in project development, a physical inspection of the proposed transportation corridor and all alternate corridors is conducted. If, at any time in the project development process a potentially contaminated site is encountered, the potential impact of mitigating the contamination is fully considered in the route and alternate route selection process. A report and results of necessary tests are provided to the LPA Environmental Division for inclusion in the environmental documents.

When avoidance is not possible, or alternatives create greater adverse environmental impacts, early evaluation of potentially contaminated sites allows time for coordination with the Mississippi Department of Environmental Quality (MDEQ) and mitigation. Potential project delays due to environmental studies and remediation activities, if necessary, make the earliest identification of potentially contaminated sites a priority.

**1.2 Environmental Testing**

Environmental testing is performed of potentially contaminated sites that require further investigation. An environmental testing report is provided to the Mississippi Department of Environmental Quality (MDEQ) for their evaluation.

**1.3 Remediation of Contamination**

Based on Mississippi Department of Environmental Quality's (MDEQ) review of the environmental testing report, MDEQ provides a written determination as to whether any additional actions are required at the site. MDEQ's determination may clear sites for acquisition, if no further environmental action is required.

**1.4 Underground Storage Tanks**

The LPA follows Mississippi Department of Environmental Quality (MDEQ) procedures for removal of underground storage tanks.

**1.5 Authority to Acquire Contaminated Site**

When practical the LPA avoids acquisition of contaminated sites, If such avoidance is not possible, the LPA's Chief Engineer must provide the LPA ROW Division written authority to acquire a contaminated site.

### 2. Environmental Procedures

#### 2.1 LPA Property Management Section National Environmental Policy Act (NEPA) Involvement

The LPA ROW Environmental Coordinator is responsible for reviewing consultant reports that are submitted to the LPA Environmental Division for inclusion in the National Environmental Policy Act (NEPA) documentation. This review includes, but is not limited to, consultant contaminated site reports. The ROW Environmental Coordinator also attends environmental public hearings and meetings to explain the right of way acquisition program to the public, as requested.

#### 2.2 Implementation of Environmental Commitments

The LPA Environmental Division makes environmental commitments that the LPA ROW Division must implement. The ROW Environmental Coordinator and ROW Agents review their projects' environmental documents to ensure that right of way acquisition activities do not conflict with commitments the LPA made during the environmental process. The ROW Environmental Coordinator and ROW Agents bring to the attention of the LPA Environmental Division and the Location Committee any potentially overlooked environmentally sensitive areas including, but not limited to, potentially contaminated sites, archaeological sites, historical properties, and Native American resources.

#### 2.3 Phase I Environmental Assessment – Identification of Potentially Contaminated Sites

The methods for identification of potentially contaminated sites include the following:

##### A. Initial Site Assessment (ISA)

Early in project development, the ROW Environmental Coordinator conducts a physical inspection of the proposed corridor and all alternate corridors. The ROW Environmental Coordinator also reviews the Mississippi Department of Environmental Quality (MDEQ) database and US Environmental Protection Agency (US EPA) database for additional information.

An Initial Site Assessment (ISA) Memorandum is prepared to document the physical inspection and database review of the project. Testing is undertaken if it could affect alternative selection. The ISA memorandum is submitted to the Property Management Officer and routed to the District Coordinator, and appropriate LPA ROW Division Sections. Copies of the ISA memorandum are sent to the relevant District Office, LPA Roadway Design Division, LPA Environmental Division, and FHWA.

##### B. Additional Methods to Identify Environmentally Sensitive Areas

Identification of potentially overlooked environmentally sensitive areas including, but not limited to, potentially contaminated sites, archaeological sites, historical properties, and Native American resources is an ongoing process. All ROW Agents, LPA staff, and LPA consultants and contractors hold some responsibility for such identification. Summarized below are some additional means by which environmentally sensitive area may be identified.

- **LPA ROW Survey, Maps & Deeds Section.** The LPA ROW Survey, Maps & Deeds Section reviews ROW plans for items that signal potentially overlooked environmentally sensitive areas (e.g., gas pumps). If such a site is found, the staff person reviews the Parcel Tracking System to ensure that the ROW Environmental Coordinator is not already aware of the site. If the site is not listed in the Parcel Tracking System, the staff person notifies the ROW Environmental Coordinator via e-mail or memorandum of the site.



## Environmental

- **LPA Title Section.** Title Agents may identify environmentally-sensitive sites as they review abstracts and deeds. If a business or property use signals potential contamination or other environmental sensitivities, the Title Agent provides a copy of the abstract to the ROW Environmental Coordinator.
- **LPA Appraisal Section.** If a potential for contamination or other environmental sensitivities is discovered during the Appraiser's interview with the property owner or site visit, the ROW Environmental Coordinator is notified via e-mail or memorandum.
- **LPA Relocation and Acquisition Sections.** If a potential for contamination or other environmental sensitivity is discovered during the Agent's interview with the property owner or site visit, the ROW Environmental Coordinator is notified via e-mail or memorandum.
- **LPA Property Management Section.** If a potential for contamination or other environmental sensitivity is discovered during the Agent's interview with the property owner or site visit, the ROW Environmental Coordinator is notified via e-mail or memorandum.

### 2.4 Prepare Contaminated Site Project File

Once an ISA is completed, the ROW Environmental Coordinator creates a Contaminated Site Project File, which includes a copy of the ISA memorandum, ISA Forms for each site identified, testing reports, and any additional documentation. Contaminated Site Project Files are created for individual parcels, as needed. For example, a Contaminated Site Project File would be created for a parcel with potentially, or confirmed, contaminated sites requiring multiple assessment phases or a site requiring remediation.

### 2.5 Freeze Acquisition of Potentially Contaminated Sites

If potentially contaminated sites or other environmentally-sensitive areas are identified, a "do not acquire" note is made, until contamination is confirmed or not found and further action is taken.

### 2.6 Property Owner Contact

Initial property owner contact occurs either during the initial site assessment or during the site visit. At this time, property owners of potentially contaminated sites are introduced to the LPA ROW Environmental Coordinator or designated agent, and to the LPA representative or environmental consultant, and proposed environmental testing procedures are explained.

During the initial property owner contact, the ROW Environmental Coordinator, or designated ROW Agent, requests permission for LPA representative and/or the consultant to access to the property. If requested, the ROW Environmental Coordinator provides a letter to the property owner requesting permission to environmentally test the property [Request for Property Owner Permission to Test Letter. The ROW Environmental Coordinator provides property owner contact information to the consultant to enable their scheduling of environmental testing.

If the property owner denies access to the property for environmental testing, the ROW Environmental Coordinator may request assistance from the LPA's Legal Division in obtaining access to the property to conduct environmental testing.

### 2.7 Phase II Environmental Assessments – Verification of Contamination via Testing

Following the identification of potentially contaminated sites, the contamination is verified via testing.

## Environmental

### A. Site Visit

If potentially contaminated sites are identified, the ROW Environmental Coordinator arranges for a site visit with the LPA representative or environmental consultant designated to conduct the environmental testing. The ROW Environmental Coordinator provides the LPA representative or consultant the ISA Form for each potentially contaminated site and a copy of the final ROW plan and/or aerial photos that identify how the ROW impacts the potentially contaminated site(s). The LPA representative or consultant reviews the entire project to ensure that no additional potentially contaminated sites are present. In addition, the LPA representative or consultant provides a recommendation regarding whether site testing for potentially contaminated sites is required. The LPA representative or consultant provides a cost estimate and scope of work for testing of sites, if required.

### B. Environmental Testing

Environmental testing is performed potentially contaminated sites that require further investigation. The ROW Environmental Coordinator, or designated representative, monitors the environmental testing, as needed. The LPA representative or consultant conducting the testing submits an environmental testing report to the LPA Property Management Section for review by the ROW Environmental Coordinator. A copy of the environmental testing report is provided to Mississippi Department of Environmental Quality (MDEQ) for their evaluation.

The ROW Environmental Coordinator summarizes the findings of the environmental testing report in a memorandum to the Property Management Officer and the memorandum is routed to the District Coordinator and appropriate LPA ROW Sections [Environmental Testing Report Memorandum]. A copy of the memorandum is provided to the LPA Environmental Division.

## 2.8 Phase III Environmental Assessments – Remediation of Contamination

Following confirmation of contamination via testing, contaminated sites that are to be acquired by the LPA are mitigated.

### A. Mitigation Determination

Based on their review of the environmental testing report, MDEQ provides a written determination to the Property Management Officer as to whether any additional actions are required at the site. The ROW Environmental Coordinator summarizes the MDEQ determination including a statement advising whether the property is cleared for acquisition in a memorandum and the memorandum is routed to appropriate LPA ROW Sections and the District Coordinator [MDEQ Determination Memorandum]. Copies of MDEQ's determination and the summarizing memorandum are sent to the relevant District Office, the LPA Environmental Division, and FHWA. MDEQ's determination may clear sites for acquisition, if no further environmental action is required.

### B. Authority to Acquire Contaminated Sites

Following determination of known contamination at a site, and when avoidance of a contaminated site is not possible or greater adverse environmental impacts are created in avoiding a contaminated site, written authority to purchase that site must be secured from the Chief Engineer. The memorandum summarizes the findings of the investigation, estimated clean up costs (if available), and any information regarding cost reimbursement, if available. If authority to acquire the site is denied, re-design of the project may be required.

If the contaminated site is eligible for reimbursement of cleanup costs under the Mississippi Groundwater Protection Trust Fund or other funding sources, appropriate steps must be taken by the ROW Environmental Coordinator to apply for cost

## Environmental

reimbursement. MDEQ reimbursement request procedures can be found at their website (<http://deq.state.ms.us/>).

The Financial Management Division has requested that payment be issued prior to reimbursements. Upon receipt of notice of reimbursement, The ROW Environmental Coordinator notifies the Financial Management Division by providing a copy of the notice and direct voucher where the invoice was paid.

### **C. Remediation of Contaminated Sites**

Following receipt of authority to acquire a contaminated site, the ROW Environmental Coordinator coordinates efforts with MDEQ and contractors, as needed, for remediation of the contamination.

#### **2.9 Removal of Underground Storage Tanks (USTs)**

Underground storage tanks (USTs) are removed following completion of acquisition and relocation. The ROW Environmental Coordinator or Property Management Officer receives an abandonment statement from the Relocation Agent for any abandoned USTs. The ROW Environmental Coordinator registers the LPA as the tank owner with MDEQ and notifies MDEQ of the tank removal date using MDEQ's Notification for Underground Storage Tanks Form and the Notification to Permanently Close UST Systems Form [MDEQ forms can be found at <http://deq.state.ms.us/>].

The ROW Environmental Coordinator coordinates with the contractor to remove and dispose of tanks and any associated contaminated soils and or liquids. The ROW Environmental Coordinator completes MDEQ's UST System Closure Report [MDEQ forms can be found at <http://deq.state.ms.us/>] to notify MDEQ that tanks have been removed and of the analytical results of samples collected during the removal. If possible, the LPA representative or consultant that completed the site assessment or environmental testing is used to provide oversight of the tank removal contractor. The LPA representative or consultant provides the ROW Environmental Coordinator with a letter report of the removal activities. This report is forwarded to MDEQ with the UST System Closure Report. After MDEQ reviews the UST System Closure Report and the oversight report, they send the Property Management Officer a written determination as to whether any additional actions are required. Upon removal of USTs, documents pertaining to USTs are forwarded by the ROW Environmental Coordinator to the parcel file.

#### **2.10 Status of Potentially Contaminated Sites Report**

Prior to construction project letting, the ROW Environmental Coordinator prepares a Status of Potentially Contaminated Sites Report. This report is prepared for every project on the letting schedule and is included in the ROW Certification, which is prepared by ROW Legal Section. The Potentially Contaminated Sites Report states that the entire project site was inspected by MDOT and provides a summary of any contamination identified including the site name, parcel number, station number, number and size of USTs, and status summary (date of site testing, MDEQ review results, how and by whom tanks will be removed, and any further actions required).

#### **2.11 Closure of Environmental Procedures/Filing of Documents in Parcel File**

After a construction project has been let and all contamination issues have been resolved, the ROW Environmental Coordinator, or designated ROW Agent, compiles all relevant documentation in date order and sends this documentation to the parcel file. Documentation typically includes the following:

- Initial Site Assessment Form
- Scope of work and cost estimate from consultant (if applicable)
- Notice to proceed with testing
- Copy of assessment report with transmittal memorandums and letter to MDEQ

## **Environmental**

- Copy of determination letter from MDEQ and transmittal memorandum
- Any invoices associated with environmental testing
- Any documentation regarding removal of USTs or contamination

## Federal Land Transfers

### Local Public Agency Right of Way Operations Manual

#### Federal Land Transfers

The following procedures document the responsibilities of the Federal Land Transfer Coordinator for transferring federal land to the LPA, as needed, for transportation projects.

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## 1. Initiation of Federal Land Transfer Process

### 1.1 Identification of Federal Land Transfer Needs

When the LPA ROW Survey, Maps & Deeds Section generates the deeds and maps for a project, they identify those parcels that are located on land owned by federal agencies.

### 1.2 Generate Highway Easement Deed for Federal Land Transfers

For federally-owned land, the LPA ROW Survey, Maps & Deeds Section generates a highway easement deed. Federal regulations (23 CFR 710.601f) require that deeds for conveyance of lands or interests in lands owned by the United States be prepared by the LPA and certified by an attorney licensed within the State of Mississippi. The deed must contain clauses required by FHWA and 49 CFR 21.7(a)(2). After the LPA prepares the deed, the LPA submits the proposed deed with the certification to FHWA for review and execution and delivery to the transferring agency for approval and execution back to FHWA who in turn delivers a transfer of the land back to the LPA for final execution and recording.

### 1.3 Notification of and Provision of Materials to Federal Land Transfer Coordinator

The LPA ROW Survey, Maps & Deeds Section provides the maps and deed descriptions of these parcels to the Federal Land Transfer Coordinator.

## 2. Federal Land Transfer Application Process

### 2.1 Federal Land Transfer Application Preparation

The Federal Land Transfer Coordinator prepares the Federal Land Transfer Application Letter for FHWA in accordance with 23 CFR 710.601d. The Federal Land Transfer Application Letter includes the following information:

1. Purpose for which the land is to be used;
2. Estate or interest in the land required for the project;
3. Federal-aid project number or other appropriate references;
4. Name of the federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
5. Commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than 10 years following the transfer of the lands to the State of Mississippi;
6. Map showing the survey of the lands to be acquired;
7. Legal description of the lands desired; and
8. Statement of compliance with the National Environmental Policy Act of 1969 (42 USC 4332, et seq.) and any other applicable federal environmental laws, including the National Historic Preservation Act (16 USC 470(f)), and 23 USC 138.

### 2.2 Federal Land Transfer Application Distribution

The Federal Land Transfer Application Letter is submitted to FHWA, except in the case of certain federal agencies that have special legislation for granting rights-of-way over lands under their jurisdictions and may proceed under their own laws. The Federal Land Transfer Coordinator sends the Federal Land Transfer Application Letter to the FHWA Mississippi Division Administrator and a copy is delivered to the LPA.

### 2.3 Federal Land Transfer Application Processing

## Federal Land Transfers

If the Federal Land Transfer Application Letter is submitted to FHWA, FHWA processes the application in accordance with 23 CFR 710.601e. If FHWA concurs with the need for the transfer, the land-owning agency is notified and a right-of-entry is requested.

In cases of federal agencies with special legislation, the LPA submits the Federal Land Transfer Application Letter directly to that federal agency. Although they have special authority, the federal agencies sometimes wish to proceed under 23 USC 107(d) and 317 and, in such cases, the Federal Land Transfer Application Letter is filed with FHWA. The federal agencies that have special authority, which permits the LPA to file its application directly, include the following:

- **Bureau of Indian Affairs.** Federal Land Transfer Application Letter is submitted directly to the Bureau of Indian Affairs, Washington DC, for rights of way across tribal lands or individually owned lands in trust by the US or encumbered by federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 USC 107(d) and 317.
- **Army or Air Force.** Mississippi submits its Federal Land Transfer Application Letter directly to the installation commander and the appropriate District Engineer of the Army Corps of Engineers.
- **Navy.** Federal Land Transfer Application Letter is submitted directly to the District Public Works Officer of the Naval District involved.
- **Veterans Administration.** Federal Land Transfer Application Letter is submitted directly to the Director of the Veterans Administration, Washington DC.

If the land-owning agency requests certain stipulations be added to the highway easement deed, these stipulations are included in the letter of consent to the FHWA's Mississippi Division executed by the land owning agency. Once FHWA obtains a Letter of Consent from the land owning agency, they forward that letter to the Federal Land Transfer Coordinator. During this process, the Federal Land Transfer Coordinator communicates with FHWA's Mississippi Division Administrator for status updates and other requests.

### 3. Federal Land Transfer Approval and Finalizing

#### 3.1 Highway Easement Deed Approval

Upon receiving the Letter of Consent from the land owning agency, the highway easement deed is approved by the following entities:

- Mississippi Transportation Commission,
- MDOT's Executive Director,
- FHWA's Mississippi Division Administrator on behalf of itself and the land owning agency (except for the Bureau of Indian Affairs, the Army, the Navy, and the Air Force), and
- Land owning agency (unless FHWA's Mississippi Division Administrator approves on their behalf).

#### 3.2 Deed Recorded at Courthouse

In accordance with 23 CFR 710.60g, following execution of the highway easement deed, the LPA records the deed in the appropriate land record office and advises FHWA and the concerned land owning agency.

#### 3.3 Certified Copies

FHWA and the land owning agency receive certified copies of the recorded instruments.

#### 3.4 Federal Land Transfer Revert Back to Federal Agency<sup>1</sup>

## **Federal Land Transfers**

When the need for the federal land acquired no longer exists, the LPA restores the land to the condition which existed prior to the transfer and gives notice to FHWA and to the concerned Federal Agency. The property immediately reverts to the control of the Federal Agency from which it was appropriated. Alternative arrangements may be made for the sale or reversion or restoration of property no longer required as part of a memorandum of understanding or separate agreement.

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<sup>1</sup>23 CFR 710.601h

**Local Public Agency  
Right of Way Operations Manual**

**Legal**

The following procedures document the responsibilities of the LPA Legal Section for provision of eminent domain services. Eminent domain (also called "condemnation") is the power of the LPA to acquire property for public uses, such as transportation projects, in exchange for payment of just compensation.

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**1. Pre-Trial Eminent Domain Procedures**

**1.1 Identification of Potential Eminent Domain Cases**

Acquisition Agents may identify parcels that can only be acquired through eminent domain. Some common reasons for filing for eminent domain are listed here:

1. Property owner is a state legislator. Prevents any appearance of a conflict of interest. The property owner is provided an FMVO and notified that the acquisition is going directly to condemnation;
2. Title issues;
3. Property owner declines to sign the deed;
4. Property owner opposition to language in the deed or easement.

If a potential condemnation is identified, the Acquisition Agent creates a Recommendation for Condemnation File. The Recommendation for Condemnation File includes the following items and is provided to the Acquisition Officer for review.

- Signed Recommendation for Condemnation Form [See Acquisition Forms Index - ROW 683];
- Copy of Agent's FMVO [See Acquisition Forms Index - ROW 205];
- Contact Report [See Acquisition Forms Index - ROW 520] completed and signed;
- W-9 Form (Acquisition Agent should make a good faith effort to get the W-9 signed and completed by the property owner. If the property owner refuses to sign W-9 Form, the Acquisition Agent will leave the form with the property owner and note this on the Contact Report and Invoice [See Acquisition Forms Index - ROW 320]);
- Physical addresses (not a post office box) of out-of-state owners of property being condemned, including lessors, renters, and easement holders; and
- Physical addresses (not a post office box) of in-state owners of property being condemned, including lessors, renters, and easement holders.

Upon receipt of a Recommendation for Condemnation File, the Acquisition Officer reviews all records and forwards the Recommendation for Condemnation File to the Review Appraiser. The Acquisition Officer may request another acquisition attempt, request additional information, or approve the Recommendation for Condemnation. Upon approval of the Recommendation for Condemnation, these documents are included in the parcel file, which is routed to the LPA ROW Legal Section Staff Attorney for review. In addition, following the Acquisition Officer's approval, the LPA Acquisition Section Secretary notes that the parcel is in condemnation, specifying a date of condemnation.

After submitting the Recommendation for Condemnation File to the Acquisition Officer, the Acquisition Agent discontinues contact with the property owners, their attorneys, or other designated representatives. If the property owner or designated representative contacts any LPA Agent, the property owner is referred to the LPA ROW Legal Section.



## Legal

### 1.2 Initiation of Condemnation Process

Upon receipt of the parcel file including the Recommendation for Condemnation forms, the LPA ROW Legal Section Staff Attorney initiates the following activities:

- Adds the parcel file to the Condemnation Status Report; and
- Prepares the recommended for condemnation case.

The LPA Legal Section Staff Attorney passes the file on to the LPA Engineering Condemnation Squad Leader.

### 1.3 Preparation of File by Engineering Condemnation Squad

The LPA Engineering Condemnation Squad conducts the following activities:

- Labels the parcel file as a condemnation file by attaching a routing sheet; and
- Copies pertinent information from the file for requesting survey or field verification.

### 1.4 Attorney Condemnation Package

Following notification of an Attorney assignment and upon receipt of proper field data or survey, the condemnation file is provided to the Legal Secretary. The Legal Secretary prepares a cover letter to the Attorney that contains instructions for the condemnation case. The Legal Secretary provides this cover letter to the LPA Engineering Condemnation Squad Leader who prepares the Attorney Condemnation Package containing:

1. Attorney Condemnation Package Cover Letter;
2. Deed description (Exhibit A);
3. Title report (derailment);
4. ROW Acquisition Map with the acquisition area shaded;
5. Condemnation Information Sheet including the Agent's FMVO, engineering witness name, and value witness name;
6. Survey; and
7. Other relevant documents.

After the condemnation package has been sent to the Attorney, the LPA Engineering Condemnation Squad Leader circulates the condemnation file back to the LPA Legal Section to inform them that the case has been approved for condemnation and has been provided to the Attorney.

Also at this point, the LPA Legal Section adds information on the case to the Condemnation Status Report and adds an adhesive label to the file notifying that this is a condemnation file and it should not be returned to the File Room until closed by the Attorney.

### 1.5 ROW Acquisition Map and Deed Description Update

Upon receipt of the survey completed for condemnation, LPA ROW Survey, Maps & Deeds Section prepares a new ROW Acquisition Map. The LPA Engineering Condemnation Squad Leader sends the LPA Appraisal Section, and LPA ROW Legal Section Staff Attorney the new ROW Acquisition Map. A copy of the updated ROW Acquisition Map and original updated deed description are placed in the condemnation file.

### 1.6 Trial Displays

The condemnation attorney may request additional trial displays, such as enlarged images of specific areas of the property. The LPA ROW Legal Section works with the LPA ROW Survey, Maps & Deeds Section to prepare these displays.

### 1.7 Filing the Condemnation Complaint

## Legal

The Attorney is responsible for filing the condemnation complaint in the Court of Record. Once the condemnation complaint has been filed, the Attorney notifies the LPA ROW Division's Legal Section of the date the complaint was filed. The LPA ROW Legal Section Staff Attorney then logs this activity into the Condemnation Status Report. If any changes are made to the trial date, the Attorney informs the LPA ROW Legal Section Staff Attorney immediately.

### 1.8 Appraisal Update Request Package

The LPA ROW Legal Section Staff Attorney submits an court appraisal request to the Appraiser of Record asking that a court appraisal be completed in 60 days. Included with this request is the following information:

1. Deed description (Exhibit A),
2. ROW Acquisition Map,
3. Attorney's name and address
4. Discovery Material Form (blank), and
5. Court appraisal guidelines and procedures.

For a detailed description of the court appraisal process, see the Appraisal Chapter of the LPA Right of Way Operations Manual.

### 1.9 Statement of Value Form

Based on the final court appraisal, the LPA ROW Legal Section Staff Attorney prepares a *draft* Statement of Value (SOV) Form. The *draft* SOV Form and completed Discovery Material Form are submitted to the Attorney a minimum of 25 days before trial.

The Attorney prepares the *final* SOV Form and files the form with the Court of Record a minimum of 20 days prior to trial.

### 1.10 Settlement Offers During Condemnation Process

If LPA receives a settlement offer from a property owner during the condemnation process, the LPA ROW Division's Legal Section reviews the offer and makes a recommendation regarding its reasonableness. Based on the recommendation, the Attorney prepares an Agreed Judgment and a trial is avoided. A copy of the Agreed Judgment is sent to the LPA Legal Section for payment processing. If the acceptance of an offer requires a significant monetary adjustment from the FMVO, a memorandum must be prepared and submitted to the parcel file justifying the adjustment.

If the offer is declined, the Attorney is informed and MDOT and the Attorney proceed towards trial.

### 1.11 Quick Take

LPA is authorized by Mississippi Code (Sections 11-27-81 to 11-27-89) to utilize a 'quick take' procedure to acquire property where negotiations to purchase the property have failed.

Under the quick take procedure, based upon a court appointed appraisal, the Court awards LPA right of immediate title and possession. LPA makes a deposit with the Court for not less than eighty-five percent (85%) of the amount of the compensation and damages as determined by the court appointed Appraiser or LPA's fair market value, whichever is greater. This grants LPA immediate right of entry, while allowing for a court hearing of the eminent domain case at a later time to determine just compensation.

The Attorney provides the order granting right to immediate title and entry to LPA and LPA processes the deposit payment. LPA delivers the deposit payment to the Court Clerk.

## **Legal**

### **1.12 Pre-trial Meeting**

The Attorney arranges a pre-trial meeting to walk through the specifics of the case and discuss testimony. This meeting includes all witnesses including an engineering witness and a value witness. Other specialty witnesses may be called on an as-needed basis. The witnesses should be present at the pretrial meeting together.

Note: Pre-trial guidelines for the value witness are contained in the Appraisal Chapter of the ROM.

## **2. Condemnation Trial and Post-Trial Procedures**

### **2.1 Trial Scheduling**

Attorneys should schedule trials as soon as possible and coordinate with witnesses as to their availability to attend and testify. The LPA Legal Section should be notified of trial dates as soon as possible.

### **2.2 Trial (or Settlement) Report**

Upon completion of trial proceedings (or completion of a settlement), the Attorney submits a Trial (or Settlement) Report to LPA. This report includes the following:

1. Caption of the case including case number, case name, and court;
2. Parcel, project, and highway numbers;
3. LPA estimates of value and dates such estimates were made;
4. All other appraisal estimates of value and dates they were made;
5. Date, place, and length of trial;
6. Brief factual report of the trial, including range of testimony of the parties, etc.;
7. Statement of the major issues;
8. Major differences in approaches to value among the LPA's witnesses and those of the property owner;
9. Explanation of any substantial variance between the numbers in the Statement of Value and the State's actual testimony;
10. Candid evaluation of the quality of LPA's witnesses;
11. Candid evaluation of the judge;
12. Comments on possible legal error in the record, explanation of the LPA's action regarding motions, objections, etc., and the court's ruling relative thereto; and
13. Recommendations regarding motions for new trial, remittitur, or appeal, and the reasons therefore.

### **2.3 LPA Condemnation Appeal**

If the trial verdict is unfavorable for LPA, the LPA ROW Legal Section determines if an appeal is reasonable. This decision can be based on economics, legal issues, or the need for clarification of an issue. Appeals are handled by the Attorney in accordance with statutes and court rules.

### **2.4 Complying with the Final Decision**

Following issuance of the final decision by the Court, the LPA Legal Section calculates interest owed and any amount above the original quick take deposit. The LPA Legal Section processes an invoice from the LPA Financial Management Division to be paid to the Clerk of the Court.

## Legal

The Attorney records the judgment in the Land Records Office of the Court of Record and sends the judgment and Trial (or Settlement) Report to the LPA ROW Legal Section. These documents are placed in the Condemnation File.

### 2.5 Condemnation File Close-out

The LPA Legal Section files the Condemnation File in the LPA's File Room. The Condemnation File contains the following completed documents:

1. Trial (or Settlement) Report;
2. Judgment (copy);
3. Notice stating that deposit was received by the clerk;
4. Refund from clerk (if any); and
5. All other documents involved in litigation of that parcel.

The Legal Secretary updates the Condemnation Status Report with the final status of the condemnation case.

### 2.6 Reimbursement of Property Owner Litigation Expenses<sup>1</sup>

The property owner is reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which were incurred due to a condemnation proceeding, ONLY if:

1. The final judgment of the court is that LPA cannot acquire the real property by condemnation; or
2. The condemnation proceeding is abandoned by LPA other than under an agreed-upon settlement; or
3. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or LPA effects a settlement of such proceeding.

## 3. Other ROW Legal Responsibilities

### 3.1 Approval of Deed Clauses

Approval of all deed clauses is kept current by Legal Section staff.

### 3.2 ROW Certification

The MDOT Legal Section prepares the ROW Certification as required by 23 CFR 635.309. The ROW Certification states the following:

- MDOT or LPA has either completed all right of way clearance, utility, and railroad work or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the construction schedule;
- MDOT or LPA has relocated all displacees to decent, safe, and sanitary housing or the State has made available to relocatees adequate replacement housing; and
- MDOT or LPA has acquired legal and physical possession of all necessary rights of way, including control of access rights when pertinent; OR although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project have been acquired; OR the acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204 (this authorization is requested only in very unusual circumstances).

## Legal

The MDOT Legal Section uses the following resources to complete the memorandum:

- Environmental Coordinator's status of potentially contaminated sites and asbestos status of improvements;
- Relocation Supervisor's status of displacee relocation;
- District Utility Coordinator's utility certification;
- LPA ROW Legal Section Staff Attorney's status of eminent domain cases; and
- Encroachment certification from the District Office.

The ROW Certification is completed for all projects except for maintenance projects. Upon completion, the MDOT Legal Section submits the ROW Certification to the Federal Highway Administration or to MDOT's Chief Engineer. Any use of federal funds in a project requires that the ROW Certification be sent to the Federal Highway Administration. If the project is funded solely by state funds, the ROW Certification is provided to the MDOT Chief Engineer. The Legal section provides the final ROW Certification to the Construction Division, the Contract Administration Division, the District Coordinator the District Office, the Chief Engineer, the Assistant Division Administrator, the Project Engineer, and Central Records.. Upon receipt of the ROW Certification from the Legal Section, the District Coordinator assists the Project Engineer in tracking the status of all outstanding exceptions noted in the ROW Certification.

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<sup>1</sup> 49 CFR 24.107

## Acquisition Project Closeout

### Local Public Agency Right of Way Operations Manual

#### Acquisition Project Closeout

The following procedures document the activities that the LPA ROW Division undertakes upon completion of an acquisition project. During acquisition project closing, all records, documentation, and maps for the project are retained and stored; any excess properties and/or right of way encroachments are cleared from the project; and all financial claims are summarized and submitted for payment.

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#### 1. Record Keeping and Retention

The LPA follows the regulations which prescribe record keeping and retention requirements for the federal-aid highway program found in 23 CFR 710.201 (f). These regulations define the types of records and the period of time these records are to be held for auditing and/or inspection.

When closing an acquisition project, all official project records are gathered. Upon completion of the acquisition of a parcel, the ROW Agent reviews the Parcel File, consolidates any materials, and submits the Parcel File to the File Room Clerk. All Parcel Files must be submitted upon completion of the acquisition for the project. These records include all accounts, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by the LPA, firms, or individuals in connection with the project.

This also includes, but is not limited to, financial records, supporting documentation, statistical records, and other records pertinent to the project. These records are kept in the LPA ROW Division File Room at the completion of the project. Records pertaining to the project such as acquisition and relocation costs are retained for a minimum period of three (3) years with some exceptions. The 3-year retention period starts when final claims are submitted for payment.

#### 2. Final Audit of Improvements

Following abatement, demolition, and contract removal of improvements, the LPA Property Management Section conducts a final audit of the entire acquisition area to ensure improvements are removed prior to contract letting.

#### 3. Distribution of Copies of Recorded Instruments

After acquisition is complete, the LPA Title Section supplies Project Engineers with copies of all recorded deeds and easements for the project.

#### 4. ROW Certification

The LPA Legal Section prepares the ROW Certification as required by 23 CFR 635.309. The ROW Certification states the following:

- The LPA has either completed all right of way clearance, utility, and railroad work or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the construction schedule;
- The LPA has relocated all displacees to decent, safe, and sanitary housing or the State has made available to relocate adequate replacement housing; and
- The LPA has acquired legal and physical possession of all necessary rights of way, including control of access rights when pertinent; OR although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project have been acquired.

The LPA Legal Section uses the following resources to complete the memorandum:

## Acquisition Project Closeout

- Environmental Coordinator's status of potentially contaminated sites and asbestos status of improvements;
- Relocation Supervisor's status of displacee relocation;
- District Utility Coordinator's utility certification;
- LPA Legal Section's status of eminent domain cases; and
- Encroachment certification from the District Office.

The ROW Certification is completed for all projects except for maintenance projects. Upon completion, the LPA Legal Section submits the ROW Certification to the FHWA. Any use of federal funds in a project requires that the ROW Certification be sent to the FHWA. If the project is funded solely by state funds, the ROW Certification is provided to the LPA. Upon receipt of the ROW Certification from the LPA Legal Section, the District Coordinator assists the Project Engineer in tracking the status of all outstanding exceptions noted in the ROW Certification.

### 5. Requests for Exceptions<sup>i</sup>

If the acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204, the LPA may request authorization to advertise the physical construction for bids or to proceed with the force account construction. This authorization is requested only in very unusual circumstances. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then proceed, but the LPA must ensure that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

When the LPA requests authorization to advertise for bids and to proceed with the physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, a full explanation and reasons including identification of each parcel will be provided in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. The LPA also will provide appropriate notification in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

### 6. Filing of ROW Acquisition Map – Post Construction

As required under Section 65-1-53, MS Code 1972 Annotated and Amended, a copy of the ROW Acquisition Map is filed with the Chancery Clerk following completion of both the acquisition of right of way and project construction.

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<sup>i</sup> 23 CFR 635.309(c)(3)

### Local Public Agency Right of Way Operations Manual

#### Property Closing

The following procedures document the responsibilities of ROW Agents in finalizing the acquisition of a parcel.

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#### 1. Property Closings by Mail<sup>1</sup>

Once an agreement has been reached on property acquisition and all appropriate instruments are signed and received by the LPA, property closing takes place. Property closing consists of the verification of title, distribution of checks and relevant documentation to the property owners and any lien holders, recording of the deed and partial releases in the appropriate land record office, and the possible reimbursement to the property owner for any property taxes which may have been assessed. This section outlines the procedures for property closings completed by mail. Section 2 of this Chapter of the LPA Right of Way Operations Manual provides procedures for property closings completed in-person.

##### 1.1 Materials Provided to the LPA Title Section

The Acquisition Agent prepares the closing file. The closing file includes lien holder names, property owner name(s), resolution of orders or minutes of corporation or non-profits, all signed instruments, notaries, signatures, and draft invoice. The Acquisition Agent attaches the Property Closing Checklist to the closing file. The Property Closing Checklist includes the following items.

- ☐ Name and address on the Internal Revenue Service W-9 form match the name and address on the invoice. Check home and business telephone numbers.
- ☐ Check the social security number or tax identification number on the Internal Revenue Service W-9 form against the invoice.
- ☐ Dollar amount on the deed equals the dollar amount on the invoice.
- ☐ Deed acreage equals invoice acreage.
- ☐ Check the notary and seal for spelling of names, dates, etc.
- ☐ Compare names on the deed to ownership on abstract. Include proper documentation, if there are differences; such as heirship forms, wills, trusts, life estates, etc.
- ☐ Check abstract for mortgages. List mortgages on the invoice if they apply, or, supply documentation if they are cancelled, partial release, satisfied, etc.
- ☐ List all liens, judgments, or lis-pendens on the invoice or send proof of payment.
- ☐ Check for unpaid taxes: (county, city, school, etc.). Unpaid taxes need to be listed on the invoice.
- ☐ Check potentially contaminated sites list. If the property is listed, contact the LPA Property Management Section before acquiring and get the status of the parcel.
- ☐ Check deed clauses; proof and ensure that they are initialed.
- ☐ Note any administrative adjustment amount and the date it was approved.

The Acquisition Agent submits the closing file to the Acquisition Supervisor for review. The Acquisition Supervisor compares the draft invoice to the deeds and checks the file for any omissions or errors. If the invoice requires revision, the prior draft is shredded. Once the Acquisition Supervisor's review is complete, the Acquisition Supervisor's Secretary prepares the final invoice, including insertion of billing codes, and the Acquisition Supervisor signs the final invoice.

The Acquisition Supervisor's Secretary then forwards the closing file, including the final invoice, to the LPA Title Section.



## Property Closing

### 1.2 Review Closing File

Upon receipt of the closing file, the LPA Title Section reviews the acquired parcel file title information to ensure all real property interest(s) have been acquired and that all conveyances and other instruments have been properly executed.

### 1.3 Verify and Record Deed at Courthouse

The Title Agent delivers the instruments to the Courthouse and verifies that no changes in ownership or lien holders have occurred. If no changes are found, the title abstract is marked "no change," dated as of the recording of the deed, and sent to LPA Title Section for inclusion in the file. The deed and partial releases are then recorded with the Chancery Clerk's Office.

If any change in ownership or lien holders is identified, the Title Agent documents the change, notifies the LPA Title Section to determine next steps, and returns the deed to the LPA Title Section. The Title Agent does not record the deed at the Courthouse if any changes in ownership or lien holders are identified. The title abstract is updated with the new lien holder or ownership information. The copy of the updated title abstract is provided to the LPA Appraisal Section, LPA Acquisition Section, LPA Survey, Maps & Deeds Section, and LPA Legal Section, as appropriate.

### 1.4 Distribution of Acquisition Payment Check and Documents

The LPA Title Section obtains the property owner checks and verifies that the names and addresses on the checks are correct. Checks must be written out to the full name of property owner, not abbreviated by initials. Upon receipt of the closing file from the LPA Acquisition Section, the LPA Title Section prepares the Closing Statement [ROW 080].

The Title Agent sends the check(s), a prepared Closing Statement [ROW 080], and a LPA ROW Acquisition Satisfaction Survey to the property owner(s) by mail.

### 1.5 Reimbursable Expenses<sup>2</sup>

The LPA reimburses the property owner(s) for all reasonable expenses incurred for penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property caused by the acquisition of the property by the LPA. The property owner(s) may also be possibly reimbursed for any property taxes which may have been assessed.

### 1.6 Distribution of Uneconomic Remnant (X-Deed) Purchases

After property closing, the LPA Title Section provides the Property Disposal Supervisor with a list of uneconomic remnants purchased. The Property Disposal Supervisor adds those parcels to the Uneconomic Remnant (X-Deed) Purchased Inventory.

### 1.7 Filing of the Recorded Original Deed

The County Clerk returns the deed to the LPA Title Section. The LPA Title Section ensures that the Parcel File includes a copy of the recorded original deed that matches the maps.

### 1.8 Digital Imaging and Archiving of Completed Files

When an acquisition project is closed, the Parcel File is reviewed, consolidated, and submitted to the File Room Clerk by a relevant ROW Agent.

## 2. In-Person Property Closings

Once an agreement has been reached on property acquisition and the deeds are signed, a property closing may take place. Property closing consists of the verification of title, distribution of checks and relevant documentation to the property owners and any lien holders, recording of the deed in the appropriate land record office, and the possible reimbursement to the property owner for any property taxes which may have been assessed. In most cases, the distribution of checks and relevant documentation are conducted by mail. Section 1 of this Chapter of the LPA Right of Way Operations

## Property Closing

Manual provides procedures for conducting property closings by mail. In some instances, property closings are conducted in-person via an attorney, ROW Agents, or contractor. This section provides the procedures for such in-person property closings.

### 2.1 Attorney Closings<sup>3</sup>

In property transactions where there are out-of-state mortgages or multiple property owners including mortgages, the Acquisition Agent sends the invoice to the LPA Title Section. The LPA Title Section reviews the invoice for parties to name on the payment check and determines whether an attorney closing is needed.

If it is determined that an attorney closing is needed, the Title Officer arranges a closing with an Office of the Attorney General approved Title Attorney. Payment is processed through the Title Attorney. If necessary, the Title Attorney will resolve liens, mortgages, or other encumbrances with the proceeds of MDOT's payment and the Title Attorney distributes the remaining funds to each property owner. Upon receipt of the check, the payee(s) sign the Closing Statement [ROW 080]. Attorney closings may occur in the following circumstances:

1. Lender declines to give partial release in advance
2. Multiple mortgages and/or liens
3. High value acquisitions (\$500,000 and up)
4. Federal tax lien
5. State tax lien
6. Stipulation by property owner for immediate exchange
7. Acquisitions that require a court order to acquire the property
8. At the discretion of the Title Officer

*All other procedures for attorney closings are similar to those for property closings by mail. Please refer to Section 1 of this Chapter of the LPA Right of Way Operations Manual for those procedures.*

### 2.2 Agent Closings

In some instances the LPA Title Section may determine that a ROW Agent Closing is necessary. In these cases, the Acquisition Agent schedules a meeting to conduct the closing. The Title Agent obtains all closing materials and updated title information from the land records and brings this information and materials to the closing meeting. The Acquisition Agent and Title Agent meet together with the property owner, explain the closing documentation, and provide the property owner with the acquisition check. Upon receipt of the check, the payee(s) sign the Closing Statement [ROW 080]. The recordation of the conveyances by the Title Agent is subject to the agreement between the Acquisition Agent and the parties of interest.

*All other procedures for agent closings are similar to those for property closings by mail. Please refer to Section 1 of this Chapter of the LPA Right of Way Operations Manual for those procedures.*

## 3. Property Tax Reimbursements

As a means of reimbursing property owners for the ad valorem taxes assessed against property they no longer own, the Title Reviewer will process the file for a property tax reimbursement. A property tax reimbursement is issued using information from the deed, title abstract and appraisal to compute the reimbursement amount.

Please refer to the LPA Determination of Ad Valorem Tax Reimbursement Form to see means of calculating the reimbursement amount.

## **Property Closing**

The above procedure applies to parcels acquired through Acquisition and Eminent Domain.

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<sup>1</sup> MDOT Policy, 2002.

<sup>2</sup> 49 CFR 24.106.

<sup>3</sup> MDOT Policy, 2002.

### Local Public Agency Right of Way Operations Manual

#### Property Disposal

The following procedures document the responsibilities of the Property Disposal Supervisor for monitoring and disposing of surplus property and uneconomic remnants.

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## 1. General Property Disposal Policies

### 1.1 Dispose at Fair Market Value<sup>1</sup>

Real property owned by the LPA that was originally acquired for a transportation project with public funding and is determined to be excess property shall be sold at fair market value. The resulting funds shall be used for transportation purposes. Exceptions to charging fair market value may be approved in the following situations:

1. With FHWA approval, when MDOT clearly shows that an exception is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under Title 23 CFR 142(f), Public Transportation. MDOT submits requests for such exceptions to FHWA in writing.
2. Use by public utilities in accordance with 23 CFR 645.
3. Use by railroads in accordance with 23 CFR 646.
4. Use for bikeways and pedestrian walkways in accordance with 23 CFR 652.
5. Use for transportation projects eligible under United States Code Title 23.
6. No property shall be disposed if it has potential for use as a park or similar recreational facility in accordance with 23 CFR 710.409.

### 1.2 FHWA Approval<sup>2</sup>

If the property was purchased or improved with federal funds, FHWA approval is required for disposal of the property.

## 2. Uneconomic Remnant Disposal Process

Whenever the LPA acquires by fee simple any property determined to be an uneconomic remnant outside the right of way, the LPA may sell the property to the adjoining property owner or owners for an amount not less than the market value established by the county tax assessor or a state licensed or certified Appraiser.<sup>3</sup> Uneconomic remnants are typically acquired via an X-Deed.

### 2.1 District Review and Recommendation

All requests to purchase uneconomic remnants are received in the District office and must be in writing from the requesting party. The District Engineer reviews the request and if the property is determined to be conveyable, a letter of recommendation for disposal is prepared. The District Engineer, and in some instances the ROW District Coordinator, compiles all necessary documents, including the recommendation letter, request letter, and row map and forwards to the Title Supervisor.

Real property interests may be retained by the LPA to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.<sup>4</sup>

### 2.2 Identification of Adjoining Landowner(s)

Once the Title Supervisor receives the request for the X-Deed disposal, a request is made for a title abstractor to prepare a title report wherein the LPA is verified as the owner and the adjoining landowners are identified.

## Property Disposal

### 2.3 Contact Requestor

The Title Supervisor, or in some instances the ROW District Coordinator, notifies the requesting party of the need to obtain waiver of purchase forms from all adjoining landowners.

### 2.4 Review for Wetlands Eligibility

If the property being disposed is large (a general rule of thumb is greater than 50 acres), the Title Supervisor checks with the LPA Environmental Division for the potential to use the property for wetland credits. The LPA converts the property to wetland habitat and looks for a sponsor, such as United States Fish and Wildlife, United States Forestry Service, Wetland Conservator, Mississippi Game and Fish, to take over the responsibility of the converted lands. The LPA does not dispose of existing wetlands.

### 2.5 Review for Alternative Governmental Uses<sup>5</sup>

Federal, state, and local agencies are given the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes. When this potential exists, the LPA Title Section Supervisor contacts the appropriate agencies and informs them of the LPA's intentions to dispose of the real property interests. The notification can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

### 2.6 FHWA Approval<sup>6</sup>

FHWA approval is not required to dispose of property that is located outside of the limits of the right of way, if federal funds did not participate in the acquisition cost of the property.

### 2.7 Request for Appraisal

When the Title Supervisor receives the title report, a request is made of the Appraisal Officer for an appraisal of the subject property. The Appraiser and Review Appraiser prepare and review an appraisal in accordance with standard appraisal procedures

### 2.8 Make Offer at Appraised Value

Upon receipt of the appraisal and all necessary waivers, the Title Supervisor offers, in writing, the requestor the opportunity to purchase the property at the fair market value as determined by the Appraiser and reviewed and approved by the Review Appraiser. The offer is subject to a transaction fee in the amount of ten percent (10%) of the appraised value. If the requestor accepts the offer, they submit a cashiers' check for the purchase price within 45 days. The check is stored in a secure location until the Q-Deed [see Survey, Maps & Deeds Form Index - ROW 640] is executed.

### 2.9 Advertise Offer for Sealed Bids

If waivers from adjacent property owners are not obtained or the offer for the property is not accepted by the requestor, the Title Supervisor may request from the Commission the authority to advertise the property for sealed bids. The property is advertised in the local paper in the county in which the property is located once a week for three (3) consecutive weeks.<sup>7</sup> All bids must be accompanied by a performance bond in the amount of five percent (5%) of the bid amount. The Title Supervisor receives the sealed bids and holds them in a secure location until the bid opening, which is attended by the Title Supervisor and a witness. The sale of property through sealed bids is subject to a transaction fee in the amount of ten percent (10%) of the accepted bid amount. The successful bidder has 30 days to provide balance owed which includes the ten percent fee but is less the five percent bond previously submitted.

The LPA may reject any and all bids at its discretion and sell the property at private sale for not less than the highest of the rejected bids or re-advertise.

## Property Disposal

### 2.11 Property Disposal Closing

The Title Supervisor has the Q-Deed [see Survey, Maps & Deeds Form Index - ROW 640] recorded at the Courthouse and then transmits the cashiers' check to the LPA.

The Title Supervisor provides a copy of the recorded Q-Deed to the District Coordinator and to LPA ROW Survey Maps and Deeds Section to be deleted from the ROW maps. A copy of the original, recorded Q-Deed is placed in the file and the original, recorded Q-Deed is returned to the Grantee.

## 3. Surplus Right of Way Disposal Process

Surplus right of way is property that was originally acquired as right of way, but has since been deemed by the LPA as no longer necessary for right of way purposes.

### 3.1 District Review and Recommendation

All requests to purchase surplus right of way are received in the District offices and must be in writing from the requesting party. The LPA reviews the request and determines if the property is no longer needed for right of way purposes. Upon declaration of the property as surplus, the LPA prepares a disposal packet, which includes the letter of recommendation for disposal, requestor's letter, and right of way map indicating subject property.

Real property interests may be retained by the LPA to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.<sup>8</sup>

### 3.2 Identification of Parties with Statutory Interests

Once the Title Supervisor receives all concurrences, a request is made for a title report to verify the LPA's ownership of the property and identify all relevant parties in regards to statutory disposal requirements.

### 3.3 Contact Requestor

Upon receipt of the title report, the Title Supervisor, or in some instances the District Coordinator, contacts the requestor to provide the following:

- Survey of the property recommended for disposal with the legal description included. The survey must be performed by a licensed survey and meet minimum standards. The property should also be staked for the benefit of the appraiser.
- Waiver of purchase form from parties who may have a statutory interest in the property but no interest in purchasing.

### 3.4 Review for Wetlands Eligibility

If the property being disposed is large (a general rule of thumb is greater than 50 acres), the Title Supervisor checks with the LPA Environmental Division for the potential to use the property for wetland credits. The LPA converts the property to wetland habitat and looks for a sponsor, such as United States Fish and Wildlife, United States Forestry Service, Wetland Conservator, Mississippi Game and Fish, to take over the responsibility of the converted lands. The LPA does not dispose of existing wetlands.

### 3.5 Review for Alternative Uses<sup>9</sup>

Federal, state, and local agencies are given the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes. When this potential exists, the Title Supervisor notifies the appropriate agencies of LPA's intentions to dispose of the real property interests. The notification can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

## Property Disposal

Disposal of property for less than fair market value requires a public interest determination and FHWA approval.<sup>10</sup> The transfer of properties to other agencies at less than fair market value for continued public use must be justified as being in the public interest and approved by FHWA. The deed to such properties, however, provides for reversion of the property for failure to continue public ownership and use. If the property is sold at fair market value, however, no reversion clause is required.

### **3.6 Preparation of Quitclaim Deed**

Upon receipt of the survey, the Title Supervisor forwards it to the ROW District Coordinator to be reviewed by the District to insure that it describes the property recommended for disposal. The Title Supervisor then prepares a Q-deed [see Survey, Maps & Deeds Form Index - ROW 640] using the approved legal description. The deed includes restrictions against junkyards and billboards.

### **3.7 Request Appraisal**

The Title Supervisor forwards a request to the Appraisal Officer that includes the survey, quitclaim deed, right of way map and request letter. The Appraiser and Review Appraiser prepare and review an appraisal in accordance with standard appraisal procedures.

### **3.8 Prepare FHWA Property Disposal Package**

The Title Supervisor prepares the Property Disposal Package that includes a cover letter, original Environmental Class of Action Determination Form [ENV 160] signed by LPA, copies of all concurrences, copies of the title report and survey, and copies of the appraisal. The Property Disposal Package is provided to FHWA for their review. This approval process takes approximately two (2) weeks.

### **3.9 Offer Property at Appraised Value to Prior, Current, and Adjoining Property Owners<sup>11</sup>**

If the surplus right of way was a partial take from the current owner of the parcel of real property from which the surplus property was originally taken, the LPA must offer, in writing, the current owner of the remaining property the first right of refusal to purchase the surplus property. If within forty-five (45) days the current property owner fails to accept the offer to purchase, the surplus property is then offered to the adjoining property owner(s). If within forty-five (45) days an adjoining property owner fails to accept the offer to purchase the surplus property, then the surplus property may be advertised for sealed bids.

If the surplus right of way was a whole take from the previous owner of the parcel of real property from which the surplus property was originally taken, the LPA must offer the prior property owner, in writing, the first right of refusal to purchase the surplus property. If within forty-five (45) days the prior property owner fails to accept the offer to purchase, the surplus property is then offered to the adjoining property owners. If within forty-five (45) days an adjoining owner fails to accept the offer to purchase the surplus property, then the surplus property may be advertised for sealed bids.

### **3.10 Advertise Offer for Sealed Bids**

If the offer to purchase was not accepted or any necessary waivers could not be obtained, the Title Supervisor may request from the LPA the authority to advertise for sealed bids. The property is advertised in the local paper in the county in which the property is located once a week for three (3) consecutive weeks.<sup>12</sup> All bids must be accompanied by a performance bond in the amount of five percent (5%) of the bid amount. The Title Supervisor receives the sealed bids and holds them in a secure location until the bid opening, which is attended by the Title Supervisor and a witness. The sale of property through sealed bids is subject to a transaction fee in the amount of ten percent (10%) of the accepted bid amount. The successful bidder has 30 days to provide balance owed which includes the ten percent fee but is less the five percent bond previously submitted.

## Property Disposal

The LPA may reject any and all bids at its discretion and sell the property at private sale for not less than the highest of the rejected bids or re-advertise.

### 3.12 Property Disposal Closing

The Title Supervisor has the Q-Deed [see Survey, Maps & Deeds Form Index - ROW 640] recorded at the Courthouse and provides a copy of the original, recorded Q-Deed to the District Coordinator and to the LPA ROW Survey Maps and Deeds Section for removal from ROW maps. A copy of the recorded Quitclaim Deed is placed in the file and the original, recorded deed is returned to Grantee. The Title Supervisor then transmits the cashiers' check to the LPA for deposit.

### 3.13 Federal Reimbursement<sup>13</sup>

The federal share of net income from the sale or lease of surplus property is used by the LPA for activities eligible for funding under Title 23 of the United States Code. Where project income derived from the sale or lease of surplus property is used for subsequent Title 23 projects, use of the income does not create a federal-aid project. The LPA tracks the sources and eligible uses of funding.

## 4. Other Property Disposal Responsibilities

### 4.1 Property Acquired by Federal Land Transfer<sup>14</sup>

When the LPA no longer has a need for property that was originally acquired through the federal land transfer process, the LPA must restore the land to the condition in which it existed prior to the transfer and give notice to FHWA and the concerned Federal Agency that the land will immediately revert to the control of the Federal Agency from which it was transferred. Alternative arrangements may be made for the sale, reversion, or restoration of the land as part of a memorandum of understanding or separate agreement. Please refer to the Federal Land Transfer Chapter of this LPA ROM for additional procedures relating to federal land transfers

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<sup>1</sup> 23 CFR 710.403 (d).

<sup>2</sup> 23 CFR 710.403 (f).

<sup>3</sup> MS Code Section 65-1-123. (3)

<sup>4</sup> 23 CFR 710.409 (c).

<sup>5</sup> 23 CFR 710.409 (b).

<sup>6</sup> 23 CFR 710.403 (f).

<sup>7</sup> Attorney General's opinion.

<sup>8</sup> 23 CFR 710.409 (c).

<sup>9</sup> 23 CFR 710.409 (b).

<sup>10</sup> 23 CFR 710.409 (d).

<sup>11</sup> MS Code Section 65-1-123. (2).

<sup>12</sup> Attorney General's opinion.

<sup>13</sup> 23 CFR 710.403 (e).

<sup>14</sup> 23 CFR 710.601 (h).



**Local Public Agency  
Right of Way Operations Manual**

**Real Property Management**

The following procedures document the responsibilities of the LPA Right of Way Division's Property Management section regarding the inspection and disposal of improvements.

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**1. General Real Property Management Policies**

**1.1 Rodent Inspection**

A Property Management Agent inspects all acquisition areas for possible rodent infestation and manages any necessary rodent control measures. The rodent inspection must be made and dated prior to initiation of property acquisition procedures with the property owner(s) or authorized representative(s).

**1.2 Improvement Inspection**

A project inspection is conducted on each project's acquisition area to document existing improvements, determine salvage values, and assess disposal requirements.

**1.3 Asbestos Inspection of Improvements<sup>1</sup>**

All improvements that require removal must be inspected for asbestos. The Property Management Agent arranges for, or conducts, an asbestos inspection of all improvements.

**1.4 Maintain Improvement Records<sup>2</sup>**

Property Management Agents maintain an inventory and the status of improvements that are, or will be, acquired for transportation projects.

**1.5 Disposal of Improvements**

The LPA must authorize the disposal of improvements. Disposal may be by sale or demolition.

**2. Real Property Management Initial and Ongoing Steps**

**2.1 Property Management Project File**

The following information is included in each Property Management Project File.

1. Property Management Project Checklist [Project Checklist Form];
2. Envelope containing pictures of all improvements;
3. Copy of Asbestos Contamination Memorandum Summary from ROW Environmental Coordinator;
4. Copy of all Salvage Value Forms [ROW 720] and revisions;
5. Copy of Salvage Value Memorandum listing all improvements and salvage values [Salvage Value Memorandum];
6. All notes, memorandums, and correspondence pertaining to the project and
7. All deeds or right of immediate possession documents on all parcels with improvements.

**2.2 Determine Real versus Personal Property**

## Real Property Management

The Property Management Agent ensures that all are in agreement on the real or personal property nature of signs and some other specific improvements such as portable buildings. The Property Management Agent receives a copy of the appraisal that denotes the real or personal property nature of all improvements. The Property Management Agent maintains a separate file of the real or personal property determinations from the appraisal.

### 2.3 Status Reports and Updates

Property Management Agents maintain the following reports.

1. **Weekly Status Report.** Property Management Agents provide weekly status reports for each project assigned to the Property Management Coordinator by noon each Friday [Weekly Status Report].
2. **Update Parcel Tracking System.** The Property Management Agent enters new and updated parcel information in the Parcel Tracking System weekly.
3. **Improvement Inventory.** Following the initial improvement inspection, the Property Management Agent retains the Improvement Inventory Worksheet [Improvement Inventory Worksheet] as a working document for that parcel to track progress and update the status of improvements as changes occur. The Property Management Agent transfers the information in the Improvement Inventory Worksheet [Improvement Inventory Worksheet] to the Improvement Inventory Database and the Parcel Tracking System as changes occur. In particular, the Property Management Agent is responsible for updating information under “remarks” weekly. “Remarks” may include the following: not acquired; condemned; acquired, waiting on owners to vacate; acquired, to be put in Abatement and Demolition Contract when vacant; acquired to be put in construction contract; sold (date of sale); acquired, vacant, put in Abatement and Demolition Contract (date given to the ROW Environmental Coordinator); put in construction contract.

### 2.4 Monthly Improvement Inventory Status Updates

On the first Monday of each month, Property Management Agents meet with the Property Management Coordinator to review active projects in the Improvement Inventory Database.

### 2.5 Check for ROW Acquisition Map Revisions

As revisions are received, the Property Management Coordinator forwards updated ROW Acquisition Maps to the Property Management Agents. In addition, the Property Management Agent checks with the Property Management Coordinator throughout the project for any ROW Acquisition Map revisions. Revisions may impact the right of way being acquired and may lead to additional improvements that need inspection and disposal.

## 3. Inspections

### 3.1 Rodent Inspection

A Property Management Agent inspects all acquisition areas for possible rodent infestation and manages any necessary rodent control measures. The rodent inspection must be completed and dated prior to initiation of property acquisition procedures with the property owner(s) or authorized representative(s). The Property Management Agent conducts a rodent inspection of the entire acquisition area, and, in particular, areas that typically harbor rodents such as garbage dumps, rubbish piles, storage sheds, barns, etc. If rodents are discovered an exterminator is obtained.

#### a. Rodent Report

The Property Management Agent prepares a Rodent Report [Rodent Report Memorandum] that identifies the existence (or the absence) of any infestation(s) as well as recommended eradication procedures. The Property Management Agent places the

## Real Property Management

original Rodent Report [Rodent Report Memorandum] in the Property Management Rodent Report File and a copy in the ROW Correspondence File for the project.

### **b. Extermination**

If rodent control measures are needed, the work is coordinated with other relevant agencies and an extermination contract is awarded to a licensed and bonded extermination company.

## **3.2 Improvement(s) Inspection**

An inspection is conducted on each project's acquisition area to document existing improvements, determine salvage values, and assess disposal requirements. The Property Management Agent receives ROW Acquisition Maps and project assignments from the Property Management Coordinator. Once ROW Acquisition Maps are received and the Property Management Agent is notified that initial contact with the property owner has been made, the Property Management Agent contacts the property owner(s) or authorized representative(s) to inspect improvements that require removal. During the project inspection, the Property Management Agent inspects all parcels with improvements and conducts the following activities:

- a. Takes photographs of all improvements, and
- b. Makes notes for use in determination of the salvage value of improvement(s).

While inspecting parcels with improvements, the Property Management Agent also looks for potentially contaminated sites that might have been missed during the Initial Site Assessment (ISA) completed by the ROW Environmental Coordinator. ROW lines or property use may have changed since the ISA causing additional improvements or potential contamination to fall within the acquisition area. The Property Management Agent also inspects the interior of each improvement to determine its condition.

## **3.3 Asbestos Inspection**

All improvements that require removal must be inspected for asbestos.<sup>3</sup> The Property Management Agent arranges for, or conducts, an asbestos inspection of all improvements. The Property Management Agent accompanies the asbestos inspector on each inspection. Mobile homes are inspected if there is an addition to the original structure or if the mobile home will be demolished. Wood decks and porches do not qualify as additions to the original structure, unless they have a shingled roof or include other suspect asbestos containing materials (ACMs).

## **3.4 Inspection Documentation**

Upon completion of a project inspection (improvement and asbestos, as required), the Property Management Agent documents the activities completed and the results of the inspection(s). The required documentation is described here.

- a. On the back of each improvement photograph, record the project number, parcel number, property owner's name, date photograph was taken, county, type of improvement, and salvage value.
- b. Complete Salvage Value Form [ROW 720] using three (3) comparisons of previous sales. Place one (1) copy of the Salvage Value Form [ROW 720] in the Property Management Section Project File and one (1) copy in the ROW Parcel File.
- c. Complete the Improvement Inventory Worksheet [Improvement Inventory Worksheet] and enter information into the Improvement Inventory Database. The Property Management Agent retains the Improvement Inventory Worksheet [Improvement Inventory Worksheet] as a working document to track progress and updates the Improvement Inventory Database throughout the project.

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- d. Notify the Property Management Coordinator, by memorandum, that the project has been inspected and note whether or not there are improvements located within the proposed right of way.
- e. When all parcels have been inspected, the Property Management Agent completes the Project Checklist [Project Checklist]:
  - Project Inspection
  - Improvement Photographs
  - Salvage Value Memorandum
  - Salvage Value Form(s) [ROW 720]
  - Rodent Report Memorandum
  - Improvement Inventory Worksheet
  - Improvement Inventory Database
  - Parcel Tracking System updates
  - Asbestos Inspections
  - Asbestos Inspection Reports
  - Authority to Advertise All Improvements
- f. Write a memorandum to the ROW Correspondence File listing all parcels with improvements and salvage values [Salvage Value Memorandum. Place the original in the ROW Correspondence File, one (1) copy in the Property Management Section Project File, and keep one (1) copy for personal reference. The Property Management Agent may need to wait until the appraisal has been completed on any specialized property or where the right of way lines are not clear.
- g. If salvage values are revised or if improvements are added or deleted from the parcel, the Salvage Value Form(s) [ROW 720] and memorandum [Salvage Value Memorandum] must be revised, copies sent to the Property Management Section File and the ROW parcel file, and the Improvement Inventory Database must be updated.
- h. File photographs, salvage value forms, inventory of improvements, and any other relevant documentation in the project's Property Management File.
- i. Once asbestos inspection is complete, either the Property Management Agent or the consultant prepares an Asbestos Inspection Report [Asbestos Inspection Report] and submits the report to the ROW Environmental Coordinator. The ROW Environmental Coordinator prepares a memorandum summarizing the results of the inspections. The memorandum is addressed to the LPA and placed in the Individual Parcel File. The Property Management Agent enters the inspection results into the LPA Improvement Inventory Database.
- j. Prior to letting, an Asbestos Contamination Status of Buildings to be Removed Report is prepared for every project on the letting schedule and is included with the ROW Certification Memorandum, which is prepared by LPA ROW Legal Section. The Asbestos Contamination Status of Buildings to be Removed Report [Asbestos Contamination Status Report] states that the project was inspected by the LPA and provides a summary of any asbestos contamination identified, the parcel number, station number, description of improvements, and status summary (asbestos identified during inspection, how and by whom asbestos will be removed, and any further actions required).

## Real Property Management

### 4. Disposal of Improvements

The LPA Property Management Section clears right of way by disposing of improvements in accordance with 40 CFR Part 61.145. The disposal of improvements must be authorized by the LPA. Disposal of improvements may occur by sale, demolition or via the construction contracts.

#### 4.1 LPA Approval for Authority to Advertise

Once the LPA Property Management Section receives the ROW Acquisition Map, and it is determined that improvements exist, the Property Management Agent requests authority to advertise all improvements for sale from the LPA. Upon receipt of the authorization for the sale of the improvements, the Property Management Agent places the order in the LPA Property Management Section's project-specific file labeled with the county and project number.

#### 4.2 Certification of Vacancy and Signage

When parcels have been acquired and the Relocation Agent has certified that improvements are vacant, they may be disposed. The Relocation Agent provides the LPA Property Management Section with a Vacancy Memorandum stating that the parcel is vacant and attaches a key. The Property Management Agent places an FBI sign on improvements in an attempt to prevent vandalism. In addition to the FBI sign, the Property Management Agent places an asbestos warning sign on the property, only if the property is not going to be sold.

#### 4.3 Property Management Parcel File

Disposal of improvements may be made by sale or demolition. Once a decision is made to dispose of the property by sale, a Property Management Parcel File is created. If the property is disposed of by demolition, a Property Management Parcel File is not created. The Property Management Parcel File label includes the county, property owner's name, project number, and parcel number. Property Management Parcel File includes the following information:

1. Property Management Parcel File Checklist;
2. Pictures of improvement(s) on that parcel;
3. Bid Recommendation Form showing a list of bidders, amount of each bid, salvage value, type of improvements, and Property Management Agent recommendations;
4. Copy of deed and appraisal; or immediate possession and notice of deposit; or agreed judgment.
5. Bill of Sale, Lead and Asbestos Disclosure Statements, signed Sales Packet for advertised bid, Sales Packet for offer under 500;
6. Sealed bid forms or offer letters received;
7. Notice of Sale and accompanying letter to newspaper [Notice of Sale and Bid form, Advertise Notice of Sale Letter];
8. Proof of publication from newspaper;
9. Copy of check and memorandums to LPA [Hold Check for Performance Bond Memo, Return Performance Bond Check Memo, and others as appropriate];
10. All letters and correspondence to and from buyers and bidders [Bid Bond Insufficient Letter, Bid Bond Not Enclosed Letter, Return of personal check for payment, Bid Late Letter, Low Bid Letter, Reject All Bids Letter, and others as appropriate]; and
11. Parcel Closeout Form.

The steps involved in the disposal of improvements by each method of disposal are described below.

#### 4.4 Improvement Disposal via Sale by Advertisement

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The decision to dispose of an improvement via sale by advertisement is made based on the salvage value [determined by the Property Management Agent on Salvage Value form ROW 720] and the time limitations of the letting schedule. There must be at least 90 days remaining prior to the letting date in order to conduct a sale by advertisement. If there are less than 90 days remaining prior to the letting date, the property is either demolished or dealt with in the construction contract. If LPA chooses to dispose of the improvement via sale and the salvage value is \$500 or more, the following steps are taken when disposing of an improvement via sale by advertisement:

1. **Provide Notice of Sale.** For improvements with a salvage value of \$500 or more, the Property Management Agent prepares the Notice of Sale and accompanying letter to the newspaper Notice of Sale and Bid Form, Advertise Notice of Sale Letter]. The Property Management Agent also may hold an open house, at their discretion. The Notice of Sale states if there is an open house (date and time) and the deadline for submission of sealed bids to the LPA. The Notice of Sale [Notice of Sale and Bid Form] must be advertised in a local newspaper in the County in which the property is located. In addition to being sent to a local newspaper, as a courtesy, a Notice of Sale [Notice of Sale and Bid Form] may be sent to persons listed on the LPA Property Management Section's mailing list.
2. **Request LPA Authority.** The Property Management Agent requests authority from the LPA to take action on bids received from the Notice of Sale.
3. **Receive Bids and Bonds.** Sealed bids are received by the LPA Property Management Section and are opened in the presence of one (1) witness. Sealed bids must include a Performance Bond or Bid Bond in the amount of \$500, or 10 percent of the purchase price, whichever is greater.
4. **Complete Bid Recommendation Form.** The Property Management Agent completes a Bid Recommendation Form [Bid Recommendation Form] including a list of bidders, the amount of each bid, and the Property Management Agent's recommendations to sell or not to sell. The Bid Recommendation Form [Bid Recommendation Form] is filed in the Property Management Parcel File.
5. **Hold Performance Bonds or Bid Bonds.** The LPA Property Management Section holds Performance or Bid Bonds in a locked receptacle until the LPA makes a decision on the bids received.
6. **LPA Decision.** The LPA makes a decision on whether to sell the improvement to the highest responsible bidder or to reject all bids. If the high bid is accepted, the LPA issues an Order of Sale listing the name of the successful bidder, the amount to be paid, the description and location of the improvement, and the time allowed for its removal.
7. **Notify Successful Bidders.** Successful bidders are sent a successful bidder letter [Sales Packet for Advertised Bid] stating they have fourteen (14) days from notification of the LPA action to submit a certified check, cashier's check, or money order for the full amount of the bid to the LPA Right of Way Division. The letter includes the sales agreement and Lead and Asbestos Disclosure Statements which must be signed, dated, and returned by the buyer with the certified check, cashier's check, or money order for the full amount of the bid. If, after fourteen (14) days, the successful bidder fails to remit the full amount of the bid, the Performance Bond or Bid Bond is forfeited.
8. **Notify Unsuccessful Bidders.** The Property Management Agent returns Performance Bonds or Bid Bonds to the unsuccessful bidders via a letter [Bid Bond Insufficient Letter, Bid Bond Not Enclosed Letter, Return of Personal Check for Payment, Bid Late Letter, Low Bid Letter, Reject All Bids Letter, and others as appropriate]
9. **Complete Sale and Ensure Removal of Improvements.** After receipt of the full amount of the bid from the successful bidder, the bidder is furnished a partially completed Mississippi Department of Environmental Quality Demolition/Renovation Asbestos

## Real Property Management

Notification Form to the buyer. The bidder is advised by letter that in accordance with the Notice of Sale, the Performance Bond or Bid Bond is retained until all improvements are satisfactorily removed.

The Property Management Agent forwards by memorandum the purchase price from successful bidders to the LPA for further processing. The Property Management Agent also forwards the bond by memorandum to the LPA, which is held until improvements are removed. The buyer has thirty (30) days (or the amount of time stated in their successful bid notification) to move improvements from the right of way. When improvements are removed, the Property Management Agent requests by memorandum [Return Performance Bond Check Memorandum] that the performance bond be returned to the bidder. The Property Management Agent updates the Improvement Inventory Worksheet [Improvement Inventory Worksheet], and the Improvement Inventory Database.

If the bidder fails to perform, the LPA may declare the bond forfeited and the Property Management Agent sends a letter of repossession [Repossession Letter] giving the buyer an additional fifteen (15) to thirty (30) days in which to comply with the Notice of Sale. If compliance is not met after this additional time limit, the bond is forfeited.

If the performance bond is forfeited and the improvements are repossessed, the Property Management Agent may request authority from the LPA to re-advertise the improvements for sale, if time permits.

### 4.5 Improvement Disposal by Private Sale

According to Mississippi State Law, improvements with salvage values of less than \$500 may be disposed of via a private sale. If an improvement is disposed through private sale, offer forms are mailed out. If disposal of an improvement is to be made through a private sale, the Property Management Agent may sell the improvement for the highest possible price. Private sales are approved by the LPA through the issuance of a Bill of Sale [Bill of Sale Letter]. A Performance Bond of \$500 or 10 percent of the purchase price, whichever is greater, is required from the prospective purchaser at the time the offer is made.

1. **Send Out Offer Forms/Receive Bids.** The Property Management Agent sends the offer request [Private Sale Letter and Offer] to persons on the LPA Property Management Section's mailing list and receives sealed offers. The offer request [Private Sale Letter and Offer] is typically sent to persons on the mailing list in the surrounding counties or other interested persons based on the Property Management Agent's discretion.
2. **Determination of Successful Bidder or No Bids Accepted.** The Property Management Agent typically selects the successful bidder based on highest bid received. At the Property Management Agent's discretion, however, no bids may be selected if they do not meet a minimum value.
3. **Notify Successful Bidder.** The Property Management Agent sends the successful bidder a letter [Sales Packet for Offer Under \$500] stating they have fourteen (14) days from notification of the LPA Right Of Way Division's Property Management Section to submit a certified check, cashier's check, or money order for the full amount of the offer to the LPA Right of Way Division. The letter includes a sales agreement and a lead and asbestos disclosure form. These forms must be signed by the bidder and submitted to the LPA Right of Way Division with a certified check, cashier's check, or money order for the full amount of the bid and the Performance Bond or Bid Bond in the amount of \$500, or 10 percent of the purchase price, whichever is greater.
4. **Notify Unsuccessful Bidders.** The Property Management Agent notifies unsuccessful bidders via a letter [Bid Bond Insufficient Letter, Bid Bond Not Enclosed Letter, Return of personal check for payment, Bid Late Letter, Low Offer Letter, Reject All Bids Letter, and others as appropriate]

5. **Complete Sale and Ensure Removal of Improvements.** After receipt of the signed sales agreement and a lead and asbestos disclosure form [Sales Packet for Offer Under \$500] and full amount of the bid from the successful bidder, the bidder is furnished a cover letter, a bill of sale [Bill of Sale], and a partially completed Mississippi Department of Environmental Quality Demolition/Renovation Asbestos Notification Form. The bidder is advised in this letter that the Performance Bond or Bid Bond is retained until all improvements are satisfactorily removed.

The Property Management Agent forwards by memorandum the purchase price from successful bidders to the LPA for further processing. The Property Management Agent also forwards the bond by memorandum to the LPA, which is held until improvements are removed. The buyer has thirty (30) days (or the amount of time stated in their successful bid notification) to remove improvements from the right of way. When improvements are removed, the Property Management Agent requests by memorandum [Return Performance Bond Check Memorandum] that the performance bond be returned to the bidder. The Property Management Agent updates the Improvement Inventory Worksheet [Improvement Inventory Worksheet], and the Improvement Inventory Database.

If the bidder fails to perform, the LPA may declare the bond forfeited and the Property Management Agent sends a letter of repossession [Repossession Letter] giving the buyer an additional fifteen (15) to thirty (30) days in which to comply with the Notice of Sale. If compliance is not met after this additional time limit, the bond is forfeited.

#### 4.6 **Sale of Improvement to Displaced Person**

An improvement may be sold to any party who qualifies as a displaced person or business. The displacee may be required to pay the salvage value upon receipt of the improvement. This means of improvement disposal is only utilized in the absence of sufficient available comparable housing or business, and at a time in the overall right of way acquisition process when it will not jeopardize the letting date. Prior to selling an improvement to a displacee, the LPA Relocation Section must provide the LPA Property Management Section with a memorandum request with an attached letter from the displacee that certifies that the displacee will use the improvement for replacement housing or business.

The Property Management Agent forwards by memorandum the purchase price from displacee to the LPA for further processing. The Property Management Agent also forwards the bond by memorandum to the LPA, which is held until improvements are removed. The displacee has thirty (30) days (or the amount of time stated in their successful bid notification) to move improvements from the right of way. When improvements are removed, the Property Management Agent requests by memorandum [Return Performance Bond Check Memorandum] that the performance bond be returned to the displacee. The Property Management Agent updates the Improvement Inventory Worksheet [Improvement Inventory Worksheet], and the Improvement Inventory Database, accordingly.

If the displacee fails to perform, the LPA may declare the bond forfeited and the Property Management Agent sends a letter of repossession [Repossession Letter] giving the displacee an additional fifteen (15) to thirty (30) days in which to comply with the Notice of Sale. If compliance is not met after this additional time limit, the bond is forfeited.

If the performance bond is forfeited and the improvements are repossessed, the Property Management Agent may request from the LPA to re-advertise the improvements for sale, if time permits.

#### 4.7 **Removal of Improvement by Asbestos Abatement or Demolition**

The Property Management Agent sends the ROW Environmental Coordinator a memorandum [Request Estimate for Abatement-Demo Memorandum] with a copy of the Status of the Improvements Report (from the Improvement Inventory Database) attached



## Real Property Management

requesting that the ROW Environmental Coordinator obtain cost estimates for abatement and demolition services.

The ROW Environmental Coordinator completes Consultant Use Request Form [ADM 301] and obtains appropriate approvals. Upon receipt of the approved Consultant Use Request Form [ADM 301], the ROW Environmental Coordinator sends a work assignment and copies of plans and specifications for asbestos abatement or demolition, as applicable, to one or more firms (at ROW Environmental Coordinator discretion) that are under a master agreement contract with the LPA to provide these services. Upon receipt of cost estimates from the contractors, the ROW Environmental Coordinator reviews the estimates and, if there are multiple estimates, selects the lowest estimate.

The ROW Environmental Coordinator notifies the Property Management Agent by memorandum of the receipt of cost estimates and requests the vacancy status. Based on information from the Relocation Agent [Vacancy Memorandum] or from the Improvement Inventory Worksheet [Improvement Inventory Worksheet], the Property Management Agent completes the vacancy status table and sends the memorandum back to the ROW Environmental Coordinator as notification of vacancy. The ROW Environmental Coordinator sends the contractor the Notice to Proceed, a letter from the Property Management Officer advising the contractor of the status of the buildings, an executed original work assignment, and a partially completed Mississippi Department of Environmental Quality Demolition/Renovation Asbestos Notification Form(s).

If asbestos abatement and demolition of improvements is not completed prior to construction contract letting, these activities may be performed by construction contractors. Such improvements are put in the construction contract thirty (30) days prior to the project advertising date. The Property Management Agent drafts a memorandum [Construction Contract Memorandum] to the LPA requesting that specific improvements be added to the construction contract. The Property Management Officer approves the memorandum and forwards the memorandum to the ROW Environmental Coordinator [Construction Contract Memorandum Header]. The ROW Environmental Coordinator attaches the Asbestos Contamination Status of Buildings to be Removed by Contractor Report [Asbestos Contamination Status Report] and the Status of Potentially Contaminated Sites [Status of Potentially Contaminated Sites] to the memorandum and forwards the memorandum to the Construction Division. If asbestos abatement is required, the Property Management Agent continues to track the vacancy status of the building and notifies the ROW Environmental Coordinator when vacant. The ROW Environmental Coordinator notifies the District Coordinator of asbestos abatement completion or if asbestos abatement is not required. The District Coordinator, in turn, notifies the Project Engineer.

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<sup>1</sup> 40 CFR Part 61.145. National Emission Standard for Hazardous Air Pollutants (NESHAP).

<sup>2</sup> Mississippi Transportation Commission requirement.

<sup>3</sup> 40 CFR 61.145. National Emission Standard for Hazardous Air Pollutants (NESHAP) for demolition and renovation.

### Local Public Agency Right of Way Operations Manual

#### Relocation

The following procedures document the responsibilities of LPA Right of Way Agents for relocating individuals and businesses as needed for public transportation projects. Persons displaced as a result of transportation projects are treated fairly, consistently, and equitably and do not suffer disproportionate injuries as a result of a displacement caused by the public transportation program.

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#### 1. General Relocation Policies

##### 1.1 Appeals<sup>1</sup>

Any aggrieved person may file a written appeal with the LPA if the person believes that the LPA has failed to properly consider their application for assistance. Within 30 days of receipt of the appeal, LPA staff shall review and respond in writing to the appeal. If the aggrieved party remains unsatisfied, the aggrieved party must, within 30 days, notify the LPA in writing of their refusal to accept the decision of LPA reviewing staff. The appeal shall then be referred to an independent hearing officer selected by the Office of the Attorney General. A recorded hearing will be held at a time and place and in the manner prescribed by the hearing officer. Further, appeals from this hearing shall be in accordance with Section 43-39-25 MCA 1972 annotated.

##### 1.2 Availability of Comparable Replacement Dwelling before Displacement<sup>2</sup>

Except in the case of an emergency move (a case involving a serious threat to life or property), a displacee is not required to move from their dwelling unless at least one (1) comparable replacement dwelling has been made available (as defined in 49 CFR 24.204(a)(1-3)) to the person.

##### 1.3 Eligibility for Relocation Assistance<sup>3</sup>

Each displacee seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify that they meet the requirements for citizenship or residency in accordance with state and federal regulations.

##### 1.4 Relocation Assistance Advisory Services<sup>4</sup>

The LPA's relocation assistance advisory program satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27CFR11527, November 24, 1962), and offers the services described in 49 CFR 24.205(c)(2).

##### 1.5 Relocation Moving Payments<sup>5</sup>

Residential displacements qualify for either actual reasonable moving expenses or moving expenses based upon a room count schedule. Nonresidential displacees qualify for actual reasonable moving expenses and/or a fixed payment. In addition to moving expenses, a small business, farm, or nonprofit organization also may be entitled to receive a reestablishment payment.

##### 1.6 Replacement Housing Payment<sup>6</sup>

A tenant or owner-occupant that meets occupancy and other eligibility requirements may be entitled to a replacement housing payment.

##### 1.7 Relocation Reviewer

## Relocation

A Relocation Reviewer reviews any documentation and computations for all relocation offers. Also, a Reviewer reviews all claims for payment and signs off on any invoices. The Relocation Reviewer also signs off on all files prior to closing them.

## 2. Notices to Displacees

### 2.1 General Information Notice

At an early stage of the project, the LPA provides general information about the project and the relocation program to persons who might be displaced. The *Relocation Assistance Guide* is distributed at all related public meetings to all persons whom believe that they may have to move.<sup>7</sup> The *Relocation Assistance Guide* provides a general written description of the LPA's relocation program including the following information:

- (1) Informs the person that they may be displaced and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- (2) Informs the person that, if they are displaced, they will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- (3) Informs the person that, if they are displaced, they will not be required to move without at least a 90 day advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available.
- (4) Informs the person that aliens not lawfully present in the United States are ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.
- (5) Describes the person's right to appeal the LPA's determination as to their application for relocation assistance for which they may be eligible.

### 2.2 Relocation Eligibility and Ninety Day Notice<sup>8</sup>

The LPA issues a Relocation Eligibility and Ninety Day Notice [Eligibility Letter – Residence and Eligibility Letter – Business or Farm ROW 701] on the same day or as soon thereafter as possible, as the provision of the FMVO or other offer of just compensation to the property owner. If delivery on the same day is not possible, the Relocation Eligibility and Ninety Day Notice is delivered within seven (7) days. The Relocation Eligibility and Ninety Day Notice informs the displacee that:

- 1) They will be displaced by the project and will be eligible for relocation benefits appropriate to their situation; and
- 2) Residential occupants do not have to move until at least 90 days after receipt of notice of replacement housing availability.<sup>9</sup> The 90-day period does not begin until at least one comparable dwelling is made available. The 90-day notice informs the displacee that in not less than 60 days the LPA will provide a second notice which will state a specific date by which a move will be required, and that this notice will provide no less than 30 days advance notice. The LPA must acquire the property in question or have right of entry before issuing the 30-day notice.

In unusual circumstances, an occupant may be required to vacate the property with less than 90 days advance written notice if the LPA determines that a 90-day period is impracticable, because continued occupancy of the property would constitute a substantial danger to health or safety.<sup>10</sup> The Relocation Supervisor must approve an

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exemption from the 90-day period. A copy of the LPA's determination for exemption from the 90-day period is placed in the Master Relocation File and the Field File.

### 2.3 Thirty-Day Notice

Once the Relocation Agent is notified that the right of way deed has been signed (or the LPA has right of entry), and comparable replacement housing has been offered, not based upon cost of new construction, and a minimum of 60 days has passed since the 90-day notice was sent to the displacee, the Relocation Agent sends a 30-Day notice [ROW 706] to the displacee notifying them that they have 30 days to relocate from the premises.

## 3. Relocation Advisory Services

### 3.1 Persons Eligible for Advisory Services

There are four (4) categories of persons eligible to receive advisory services:

1. **Persons occupying real property to be acquired for the project.** Most people to whom Relocation Agents provide advisory services fall into this category. This may include owners and tenants of residences, businesses, farms, and non-profit organizations.
2. **Persons occupying real property adjacent to that being acquired who are caused substantial economic injury by the acquisition.** The acquisition of property adjacent to a business may reduce its clientele significantly, limit accessibility, or affect it in other ways that cause it substantial harm. While such businesses are not displaced persons and, therefore, not entitled to business relocation payments, the LPA does make available relocation assistance advisory services to them. Such services might include consultation on space needs, current market conditions, or traffic patterns or transportation as they relate to relocating the business; information regarding availability of relocation sites; or information about and referral to the Small Business Administration.
3. **Persons who, as a result of the project, move or move personal property from real property not being acquired for the project.** For example, the owner of a business lives across the street from his or her business location. When it is relocated across town, the owner chooses to move his or her residence also.
4. **Persons who move into property after initiation of negotiation and are aware that they will have to move due to the project.** In such cases, the tenant moves in with the knowledge that they will have to move out when the project requires and that they will not receive relocation payments to assist with the move. Such short-term occupants are entitled to advisory services.

### 3.2 Required Advisory Services

Relocation Agents provide a range of advisory services, but the LPA must make available the following basic, minimal services to all displaced persons:

- Explain relocation services and appropriate relocation assistance payments.
- Explain eligibility requirements for each relevant type of relocation payment and determine eligibility for payments of each displacee. Provide verbal and written advice that persons without legal rights to be in this Country are not eligible to receive relocation payments. Include a statement on all claim forms that allows each person to attest to eligibility for relocation payments based on citizenship or a legal right to reside in this Country.
- Determine the needs of displacees for advisory assistance. Relocation Agents are familiar with the many different, and sometimes special, needs of the displaced households and businesses.

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- Make every effort to help meet the needs identified, while recognizing the importance of displaced person's priorities and their desire, or lack of same, or assistance.
- Provide the following specific types of services, as appropriate:
  - Current listings, including prices or rents, of replacement properties either comparable to acquired dwellings or appropriate for displaced businesses or farms.
  - Information concerning federal and state housing and other programs offering relocation or related types of assistance, as needed.
  - Assistance in obtaining and completing application or claim forms for relocation payment or other related assistance, as needed.
  - Transportation to inspect potential relocation housing, when needed.

## 4. Relocation Preparation Procedures

### 4.1 Materials Furnished to Relocation Agents

Relocation Agents are provided a copy of the ROW Acquisition Map (from the LPA ROW Survey, Maps & Deeds Section) and copies of the appraisals on parcels involving relocation (from the LPA Appraisal Section).

### 4.2 Project Acquisition Kickoff Meeting

Upon receipt of the project start date from the LPA, the District Coordinator schedules a "project acquisition kickoff meeting" through appropriate LPA ROW Section Head. The project acquisition kickoff meeting is a short meeting of the entire acquisition project team to establish the basic project objectives.

Each Section Officer determines the appropriate LPA personnel to invite to the project acquisition kickoff meeting. Invited personnel may include Acquisition Agents, Relocation Agents, Appraisers, Property Management Agents, ROW Survey, Maps & Deeds Technicians, and FHWA. Other invited personnel may include District Utility Coordinators, District Pre-Construction Engineers, and other staff, as appropriate.

The project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project. The topics discussed include the following:

1. Review project files
2. Project start and end dates, if known
3. Contract letting schedule and desired possession date
4. Project purpose and benefits
5. Contact information for:
  - Project Engineer
  - Relocation Agent(s)
  - Acquisition Agent(s)
  - Review Appraiser
  - Appraisal Team Leader
  - Property Management Agent(s)
  - Other acquisition team members, as appropriate
6. Review of maps
7. Discuss Staffing
8. Establish timelines
9. Tour the project by map, vehicle, and/or foot to become familiar with and oriented to the proposed highway's route and the acquisition areas. In particular, look for potential property owner and displacee issues. Bring potential issues to the attention of the LPA for resolution.

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10. Identify priority parcels. Priority parcels may include those involving relocation of displacees, relocation of utilities, or other complex parcels (such as, those involving improvements, hazardous waste, government agencies, partnerships, businesses, churches, casinos, associations, estates, multiple owners, and out-of-state owners). The Appraisal Supervisor, in coordination with the Appraisal Team Leader and the District Coordinator, determines the order in which parcels are appraised and acquired.
11. Number and size of underground storage tanks as well as any other information on potentially contaminated sites.
12. Review environmental commitments.
13. Review special construction features.

### 4.3 Relocation Agent Map Review and Site Visit

In advance of appraisal initiation, the District Coordinator is responsible for requesting that the Project Engineer install flags/stakes on the project at locations where they are needed to clarify right of way boundaries. ROW Agents should not rely on concrete markers for determining right of way boundaries. ROW Agents should refer all right of way staking, construction limits, and access questions to the Project Engineer.

Following the Appraisal Agent and District Coordinator site visit, all Acquisition Agents and Relocation Agents involved in the project participate in an Acquisition and Relocation Agent site visit. They meet with the Project Engineer (who may ride the project with them) and discuss the acquisition objectives, timeline, and maps. The Acquisition and Relocation Agent site visit ensures that communications with the public about key project deadlines is consistent across ROW Agents and the Project Engineer. In general, only a portion of the parcels to be acquired on a given project involve relocation. The site visit is coordinated so that the Relocation Agent may attend only the portion of the site visit relevant to parcels involving relocation. The Acquisition Agent may spend several more hours on the site visit than the Relocation Agent.

The site visit helps the Relocation Agent to establish an understanding of the project including relocations, comparables needed, miscellaneous personal property, businesses, etc. The Relocation Agent inspects the route of the project and notes the status of staking and improvements situated in close proximity to proposed right of way.

### 4.4 Relocation File Preparation

Prior to initial contact with each displacee, the Relocation Agent prepares a Relocation File for each displacee. This file may include the following:

- Relocation File Cover Sheet
- *Relocation Assistance Guide* (always have several copies on hand)
- Appraisal [see Appraisal Form Index - ROW 023 or ROW 024]
- Review Appraiser's Estimate of Fair Market Value
- Business cards
- List of potentially contaminated sites or other environmentally-sensitive areas, including underground storage tanks
- Applicable forms, to possibly include:
  - Relocation Assistance Advisory Information – Non-Residential [ROW 679]
  - Relocation Assistance Advisory Information – Residential [ROW 680]
  - Relocation Assistance Officers Statement [ROW 681]
  - Inspection Report on Replacement Dwelling [ROW 688]
  - Comparable Replacement Housing [ROW 689]
  - Claim for Payment (Relocation Assistance) [ROW 690]
  - Claim for Payment (Alternate Moving Cost – Method for Business, Farm, or Non-Profit) [ROW 691]

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- Appeal [ROW 692]
- Increased Mortgage Interest Computation [ROW 696]
- Offer Letter (Dwelling) [ROW 697]
- Offer Letter (Dwelling Rental) [ROW 698]
- Offer Letter (Mobile Home Ownership – 180 Days or More) [ROW 699]
- Offer Letter (Mobile Home – Short Term Owner and Tenant) [ROW 700]
- Eligibility Letter – Residence
- Claim for Payment (Moving Expenses for a Business) [ROW 704]
- Offer Letter (Business or Farm) [ROW 705]
- 30-Day Notice [ROW 706]
- Eligibility Letter – Business or Farm [ROW 701]
- Relocation Assistance Personal Property Form [ROW 708]
- Computation of Rent Supplement Payments [ROW 712]
- Computation of Replacement Housing Payment for the owner of a mobile home and site (owner-occupant of 180 days or more [ROW 716]
- Computation of Replacement Housing Payment Based on Construction Costs (owner-occupant of 180 days or more [ROW 900]
- Computation of Replacement Housing Payment Based on Comparables (owner-occupant of 180 days or more [ROW 902]
- Replacement Cost New Estimate [ROW 903]
- Comparables Analysis Form [ROW 904]
- Abandonment Form

## 5. Initial Contact and Information Gathering Procedures

### 5.1 Initial Displacee Contact

The Relocation Agent meets with every displacee. If the Relocation Agent has a telephone number for the displacee the initial contact is made via telephone. If a telephone number is not available, the Relocation Agent may stop by the property and set up a meeting in person. If the displacee is not available, the Relocation Agent leaves a business card and a note requesting that the displacee contact them. During the initial contact, either on the telephone or in person, the Relocation Agent does the following:

1. Identifies themselves as a Relocation Agent of the LPA and provides their name, title, and telephone number (via a business card, if in-person).
2. Explains that the property on which the displacee lives (or runs a business) is being acquired as part of a transportation project and that they (or their business) will be provided with relocation assistance.
3. Requests a meeting to discuss the displacee's relocation eligibility. This meeting is occasionally arranged jointly with the Appraiser, as applicable.<sup>11</sup>
4. Provides displacee with a copy of the *Relocation Assistance Guide* (if in-person).

All attempts to contact and meet with the displacee are documented on the Relocation Assistance Officer Statement [ROW 681].

### 5.2 Initial Displacee Contact – Relocating Miscellaneous Personal Property Only

If only miscellaneous personal property is being relocated and the displacee(s) is unable to meet, the Relocation Agent may send an initial contact package to the displacee. In all other cases, the Relocation Agent must meet with displacee. The initial contact package includes:

- Contact Letter – Miscellaneous Property Only
- Relocation Assistance Advisory Information [ROW 679]
- Relocation Assistance Personal Property Form [ROW 708]
- *Relocation Assistance Guide*

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The initial contact package is sent by certified/registered mail, return receipt requested.<sup>12</sup> The Relocation Agent documents that they were unable to contact the displacee and retains mail receipts in the Relocation File. In the case of miscellaneous personal property moves, the Relocation Agent may correspond with the property owner via telephone or mail.

### 5.3 Initial Displacee Meeting<sup>13</sup>

The Relocation Agent conducts a personal interview with each displacee to determine their relocation needs and preferences. The Relocation Agent explains the relocation payments and other assistance for which the displacee may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.

Relocation Agents make every possible effort to meet with the displacee in person or, at least, by telephone. Under no circumstances does a Relocation Agent go onto the property of a property owner who has forbidden access to their property. If relocation is a factor, both an Appraiser and Relocation Agent are involved in the initial meeting, when feasible.<sup>14</sup> The Relocation Agent brings the following items to the initial displacee meeting:

- Appropriate Relocation Advisory Information [ROW 680 for residential; or ROW 679 for non-residential and ROW 708 for personal property]
- Several copies of the *Relocation Assistance Guide*
- Relocation File
- Tape measure
- Camera
- ROW Acquisition Map
- Business cards

During the initial displacee meeting, the Relocation Agent conducts the following actions:

1. Provide displacee with a copy of the *Relocation Assistance Guide* and Relocation Agent's business card.
2. Review, complete, and request that the displacee(s) signs the Relocation Advisory Information [ROW 680 for residential; or ROW 679 for non-residential and ROW 708 for personal property]. In some instances, these forms are completed at follow-up visits.
3. Measure improvements and sketch displacement dwelling [X Property Sketch]. If possible, the Appraiser and Relocation Agent measure the improvements together. Both draft a plot of the improvement(s) to be acquired and then meet to discuss the diagrams. If a meeting is not possible, the Appraiser and Relocation Agent both take measurements.
4. Photograph improvements and/or personal property.

To certify that all pertinent issues are discussed in the initial displacee meeting, all forms that are reviewed must be signed by the Relocation Agent and the displacee(s). If a displacee(s) refuses to sign a reviewed document, the Relocation Agent notes that refusal on the form and pursues that signature throughout the relocation process.

Upon completion of the initial displacee meeting, the Relocation Agent prepares the following:

1. Relocation Assistance Officers Statement [ROW 681] to document the initial displacee meeting.
2. If Relocation Agent does not conduct the initial displacee meeting with the Appraisal Agent present, consult with the Appraiser to make sure they are in agreement on determinations of real versus personal property. The Appraiser provides the real or personal nature of every improvement in the appraisal report.



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3. Use improvement measurements and dwelling sketches to compute square footage. Significant differences between Appraiser and Relocation Agent square footages must be reconciled.
4. Copy all forms, attach pictures, and send originals to the Relocation Section and place copies in the field files.

### 5.4 Eligibility – Citizenship<sup>15</sup>

Relocations Agents explain eligibility requirements for each relevant type of relocation payment and determine eligibility for payments of each displacee. Relocation Agents also provide verbal and written advice that persons without a legal right to be in this Country are not eligible to receive relocation payments. Displacees certify their eligibility by signing the claim form that includes a statement attesting to their eligibility for relocation payments based on citizenship or a legal right to reside in this Country.

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
2. In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. This certification may be made by the head of household on behalf of family members.
3. In the case of an unincorporated business, farm, or nonprofit organization, that each property owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal property owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to that displacee. Any payment(s) for which such displacee would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

The Relocation Agent considers the certification provided by the individual to be valid, unless the LPA determines that it is invalid based on a review of an alien's documentation or other information that the LPA considers reliable and appropriate.

Any review of the certifications described in this section shall be conducted in a nondiscriminatory fashion. All Relocation Agents apply the same standard of review to all such certifications, except that such standard may be revised periodically.

If, based on a review of an alien's documentation or other credible evidence, the LPA has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, the LPA obtains the following information before making a final determination.

- a. If the Relocation Agent has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the LPA obtains verification of the alien's status from the local Immigration and Naturalization Service (INS) Office. A list of local INS offices was published in the Federal Register in

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November 17, 1997 at 62 FR 61350. Any request for INS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. If the LPA is unable to contact the INS, the LPA may contact FHWA in Washington, DC at 202-366-2035 (Office of Real Estate Services) or 202-366-1371 (Office of Chief Counsel), for a referral to the INS.

- b. If the Relocation Agent has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the LPA requests evidence of United States citizenship or nationality from such person and, if considered necessary, verifies the accuracy of such evidence with the issuer.

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the LPA's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

For purposes of this subsection, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

1. A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
3. Any other impact that the LPA determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

### **5.5 Eligibility – Lawful Occupancy<sup>16</sup>**

Any person who occupies the real property, either in person or via personal property, and is not in unlawful occupancy on the date the FMVO is provided, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the LPA determines that:

1. The occupant received an eviction notice prior to the provision of the FMVO and, as a result of that notice, is later evicted; or
2. The occupant is evicted after the provision of the FMVO for serious or repeated violation of material terms of the lease or occupancy agreement; or
3. In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

### **5.6 Personal Property and Real Property Determination**

The appraiser and the relocation agent identify and come to a resolution whether property is personal property or real property. Every effort must be made to do this prior to, or at the time of, the appraisal.<sup>17</sup> The appraisal report includes information on the personal or real property nature of all improvements. The Appraiser documents the personal or real property nature of all improvements, regardless of whether they have "contributory value." For mobile homes, the Appraiser bases their determination on the answers to the following questions:

- 1) How is the mobile home affixed to the property?
- 2) Have the wheels and axles of the mobile home been removed?
- 3) Does the mobile home owner file for homestead exemption at the County Tax Assessors?

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- 4) Does the mobile home have any additions to the original structure (i.e., rooms, deck, roof)?
- 5) Has the mobile home been anchored and blocked?

### 5.7 Inspect Comparable Housing<sup>18</sup>

The Relocation Agent inspects all comparable replacement housing prior to its being made available to a displacee to ensure that applicable standards are met. Elements of inspection include comparison of housing features to displacement dwelling and visual inspection to check for obvious decent, safe, and sanitary (DSS) requirements.

### 5.8 Provide Location Options<sup>19</sup>

Whenever possible, minority persons are given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings not located in an area of minority concentration that is within their financial means. This policy, however, does not require the LPA to provide a displacee a larger payment than is necessary to enable that displacee to relocate to a comparable replacement dwelling.

This subsection is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.<sup>20</sup>

## 6. Selection of Replacement, Calculation, and Presentation of Offer

### 6.1 Joint Acquisition and Relocation Offer Policy<sup>21</sup>

A displacee must receive a notice of eligibility that informs them that they will be displaced and will be eligible for relocation benefits. The LPA issues a Relocation Eligibility and Ninety Day Notice, which may be incorporated in the Replacement Housing Offer or a separate letter of eligibility [Eligibility Letter – Residence and Eligibility Letter – Business or Farm ROW 701] on the same day, or as soon thereafter as possible, as the provision of the FMVO or other offer of just compensation to the property owner. If delivery on the same day is not possible, the Relocation Eligibility and Ninety Day Notice are delivered within seven (7) days.

Where feasible, the acquisition FMVO and relocation offer letter are provided at the same time. If the property is occupied by a tenant, the FMVO and relocation offer are provided separately because the property owner does not receive relocation assistance or benefits. If the offers cannot be made at the same time, the Acquisition Agent notifies the LPA Relocation Section promptly of the provision of the FMVO.

### 6.2 In-Person Relocation Offer

If the displacee is not available to meet in-person or by telephone, the displacee must be provided their relocation offer by certified/registered mail.<sup>22</sup> The mail receipts are placed in the LPA ROW Division Master Relocation File and a copy in the Field File. A follow-up in person meeting must be scheduled for all in-state displacees, as soon as possible, so necessary advisory services are provided.

### 6.3 Inspect Replacement Dwelling<sup>23</sup>

Following the selection of a replacement dwelling by a displacee, the Relocation Agent conducts an inspection for decent, safe, and sanitary standards. A picture is attached to Relocation Inspection Form [ROW 688], which is sent to the Relocation Master File. A replacement housing payment will not be made unless an inspection of the replacement dwelling has been completed and, based upon visual observations, the dwelling meets such decent, safe, and sanitary standards. The Relocation Agent may require additional documentation, such as an Engineer's Inspection Report, to determine that the replacement dwelling is decent, safe, and sanitary.

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### 6.4 Residential Relocation

The Relocation Agent provides written notification of the relocation assistance offer. On the day the relocation assistance offer is made, the Relocation Agent reconfirms that at least one (1) of the comparables is still for sale and is in good condition. The procedures for this written notification differ based on whether the displacee is an owner or a tenant, as described under this section's subparts (A, B, C, and D), below.

The written notification establishes the upper limit of the purchase supplement and makes the displacee aware of the amount of the relocation entitlement. The LPA also may reimburse for some other costs involved in the purchase of a replacement dwelling including the following:

- **Increased interest cost** [ROW 696, Increased Mortgage Interest Computation]. Increased interest costs are reimbursed if the interest cost on the new mortgage exceeds that of the present mortgage.<sup>24</sup> To be eligible, the acquired dwelling must have been encumbered by a bona fide mortgage that was a valid lien for at least 180 days prior to the initiation of negotiations. Reimbursement for purchaser points and/or a loan origination fee also are possible, if such fees are normal to real estate transactions in the area. The payment for increased mortgage interest cost is equal to the amount that will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Computation of the increased mortgage interest costs payment, which is contingent upon a mortgage being placed on the replacement dwelling, is calculated as follows:
  1. The payment is based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment is prorated and reduced accordingly. In the case of a home equity loan the unpaid balance is that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
  2. The payment is based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
  3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
  4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
    - (i) They are not paid as incidental expenses;
    - (ii) They do not exceed rates normal to similar real estate transactions in the area;
    - (iii) The LPA determines them to be necessary; and
    - (iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.
  5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be

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made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

- **Incidental Expenses.** Reimbursable incidental expenses are those actual reasonable costs incurred by the displaced person incident to the purchase of a replacement dwelling provided such expenses are customarily paid by the buyer. Examples of eligible incidental expenses include the following:
  - Legal, closing, and related costs including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
  - Lender, FHA, or VA appraisal fees.
  - FHA or VA application fee.
  - Certification of structural soundness and termite inspection when required by the lender.
  - Up to 120 days of construction cost interest, if replacement housing offer is based upon construction cost new.
  - Engineer's Inspection Report

Reimbursable incidental expenses, however, do not include prepaid expenses such as real estate taxes and property insurance.

### A. Owner-Occupant of At Least 180 Days

To receive a purchase supplement payment a residential owner-occupant must have been in residence for at least 180 days prior to the initiation of negotiations. Regardless of length of residency, however, any lawful occupant may be eligible for moving expenses.

The **replacement housing payment** for an eligible 180-day homeowner-occupant may not exceed \$22,500. The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling
2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling
3. The reasonable expenses incidental to the purchase of the replacement dwelling
4. Moving costs of miscellaneous personal property

The **price differential** to be paid is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- (i) The reasonable cost of a comparable replacement dwelling as determined in accordance with Sec. 24.403(a); or
- (ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

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To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

If the owner retains ownership of the dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- (i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling; and
- (iii) The current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

In preparation of the relocation offer to an owner-occupant, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Officers Statement [ROW 681] to document moving expenses and replacement housing payment.
- Determines moving expenses based on the schedule as approved by FHWA or based on a minimum of two estimates obtained from commercial movers. (For specialized moves where there may be only one (1) qualified mover, one (1) estimate may be used.) Moving expenses for additional personal property may be calculated using estimates obtained by the LPA Relocation Section.
- Completes the Comparable Replacement Housing Description [ROW 689] or Construction Cost Estimate/Housing of Last Resort [ROW 903], as follows:
  1. Comparable Replacement Housing. For each house the Relocation Agent researches as a comparable, the Comparable Replacement Housing Description [ROW 689] is completed. In addition, the Relocation Agent completes the Comparable Analysis Form [ROW 904] that lists the displacement house and a description of up to three comparable houses. The Relocation Agent then completes the Computation of Replacement Housing Payment Based on Comparables (owner-occupant of 180 days or more) [ROW 902].
  2. Housing of Last Resort. If an existing comparable house is not available for purchase, the Relocation Agent completes the Construction Cost Estimate/Housing of Last Resort [ROW 903]. The Relocation Agent completes the Computation of Replacement Housing Payment Based on Construction Costs (owner-occupant of 180 days or more) [ROW 900]. The process for requesting a cost new estimate from a licensed and bonded contractor is provided below.
    - Complete the Relocation Assistance Officer's Statement [ROW 681] to document justification for construction of a replacement dwelling.
    - Check the Comparable Sales Brochure and the Project Miscellaneous File for a list of available contractors. If no contractor is listed for the type of estimate needed or the contractor is not available within a reasonable timeframe, check with local real estate professionals, the county farm co-op, and/or the local phone directory for additional contractors.
    - The contractor cannot be paid unless a W-9 is on file.

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- If the cost of the estimate is \$200 or less, proceed and request the estimate. If a fee of more than \$200 is requested, contact the Relocation Supervisor for approval.
- Submit cost estimate documentation requirements to the contractor using the Construction Cost Estimate/Housing of Last Resort [ROW 903].
- Accompany the contractor to the displacement dwelling(s).
- Request the completion date for the cost estimate from the contractor.
- Inspect the cost estimate for completeness.
- Request that the contractor submit the invoice to the Relocation Agent at the field office. Inspect the contractor's invoice for:
  1. Contractor's name, address, and phone number
  2. Contractor's tax identification number or social security number
  3. Project number and file number
  4. List of structures or items for which cost estimates were provided
  5. Date
  6. Amount of invoice

After inspecting the invoice and ensuring that all required items are present, sign the invoice, date it, and submit to the LPA Relocation Section for payment.

The Relocation Agent sends all documentation to the Relocation Reviewer. Upon approval of Relocation Reviewer, a relocation offer can be made. The Relocation Agent completes the Offer Letter (Dwelling/Owner-Occupant) [ROW 697] and provides the offer to the displacee. Then the Relocation Agent prepares a Relocation Assistance Officer's Statement [ROW 681] to document the offer made to displacee.

### **B. Tenant of At Least 90 days**

Residential tenants of at least 90 days are eligible for relocation benefits. To obtain full relocation benefits tenants must have legally occupied the property for at least 90 days prior to initiation of negotiations. Regardless of the length of occupancy, tenants may be eligible for moving expenses. A tenant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance or down payment assistance.

The **rental assistance payment** shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- (i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling;
- (ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person;  
or
- (iii) HUD low income limits effective 2/13/07.

The base monthly rental for the displacement dwelling is the lesser of:

- (i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the LPA; or
- (ii) Thirty (30) percent of the person's average gross household income; or
- (iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

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The **down payment assistance payment** shall not exceed the amount the person would receive under a rental assistance payment. At the discretion of the LPA, a down payment assistance payment may be increased to any amount not to exceed \$5,250.

Alternatively, tenants of at least 90 days are eligible for assistance toward expenses related to the purchase of a decent, safe, and sanitary replacement dwelling (down payment and other incidental expenses incurred in the purchase of a replacement dwelling). Up to \$5,250 or the amount of the rent supplement, whichever is greater, may be used toward expenses related to the purchase of a replacement dwelling.

In preparation of the relocation offer, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Officers Statement [ROW 681] to document moving expenses and rent supplement, as applicable.
- Determines moving expenses based on the schedule in the *Relocation Assistance Guide* or based on a minimum of two estimates obtained from commercial movers. Moving expenses for additional personal property may be calculated using estimates obtained by the LPA Relocation Section.
- Completes the Comparable Replacement Housing Description [ROW 689] for each house the Relocation Agent researches as a comparable.
- Completes the Comparable Analysis Form [ROW 904] listing the displacement house and a description of up to three (3) comparable houses.
- Completes the Computation of Rent Supplements Payments [ROW 712]. Rent supplement payments are determined by converting actual monthly rent to a “base monthly rent.” The base monthly rent includes appropriate adjustments allowing for perceived differences in estimated monthly utility costs (heat, light, water, and sewer) not included in the actual rent. Additional adjustments based on gross family income or any housing assistance payments may be required in establishing a “base monthly rent” for the dwelling. The Relocation Agent may request information verifying utilities costs, gross family income, and/or housing assistance payments. If a tenant of 90 days or more does not pay market-based rent (for example, housing is provided in exchange for labor or a family relationship allows for discounted rent), the Relocation Agent may establish a market-based rent on the displaced dwelling. The Relocation Agent researches comparable rents to establish the market-based rent. The market-based rent is reviewed and approved by the Relocation Reviewer. Market rent converted to base monthly rent as described above is used to compute a rent supplement for a home owner.
- Sends all documentation to the Relocation Reviewer. Upon approval of Relocation Reviewer, relocation offer can be made.
- Completes Offer Letter (Dwelling Rental/Residential Tenant) [ROW 698] and provides the offer to the displacee.
- Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to the displacee.

### C. Owner-Occupant of Less Than 180 Days

An owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance or down payment assistance and moving expenses, if such displaced person:

1. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and



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2. Has purchased and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the LPA extends this period for good cause) after the later of:
  - i. The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or
  - ii. The date he or she moves from the displacement dwelling.

The **rental assistance payment** shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- i. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
- ii. The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

The base monthly rental for the displacement dwelling is the lesser of:

- i. The fair market rent for the displacement dwelling; or
- ii. Thirty (30) percent of the person's average gross household income; or
- iii. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

An eligible displaced person who purchases a replacement dwelling is entitled to a **down payment assistance payment** in the amount the person would receive under the rental assistance payment if the person rented a comparable replacement dwelling. At the discretion of the LPA, a down payment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive if he or she met the 180-day occupancy requirement. The LPA's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant is not eligible for this payment.

In preparation of the relocation offer, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Officers Statement [ROW 681] to document moving expenses and rent supplement, as applicable.
- Determines moving expenses based on the schedule in the *Relocation Assistance Guide* or based on a minimum of two estimates obtained from commercial movers. Moving expenses for additional personal property may be calculated using estimates obtained by the LPA Relocation Section.
- Completes the Comparable Replacement Housing Description [ROW 689] for each house the Relocation Agent researches as a comparable.
- Completes the Comparable Analysis Form [ROW 904] listing the displacement house and a description of up to three (3) comparable houses.
- Completes the Computation of Rent Supplements Payments [ROW 712]. Rent supplement payments are determined by converting actual monthly rent to a "base monthly rent." The base monthly rent includes appropriate adjustments allowing for perceived differences in estimated monthly utility costs (heat, light, water, and sewer) not included in the actual rent. Additional adjustments based on gross family income or any housing assistance payments may be required in establishing a "base monthly rent" for the dwelling. The Relocation Agent may request information verifying utilities costs,

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gross family income, and/or housing assistance payments. If a tenant of 90 days or more does not pay market-based rent (for example, housing is provided in exchange for labor or a family relationship allows for discounted rent), the Relocation Agent may establish a market-based rent on the displaced dwelling. The Relocation Agent researches comparable rents to establish the market-based rent. The market-based rent is reviewed and approved by the Relocation Reviewer. Market rent converted to base monthly rent as described above is used to compute a rent supplement for a home owner.

Alternatively, owner-occupants of less than 180 days and tenants of 90 days or more are eligible for assistance toward expenses related to the purchase of a decent, safe, and sanitary replacement dwelling (downpayment and other incidental expenses incurred in the purchase of a replacement dwelling). Up to \$5,250 or the amount of the rent supplement, whichever is greater, may be used toward expenses related to the purchase of a replacement dwelling.

- Sends all documentation to the Relocation Reviewer. Upon approval of Relocation Reviewer, relocation offer can be made.
- Completes Offer Letter (Dwelling Rental/Residential Tenant) [ROW 698] and provides the offer to the displacee.
- Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to the displacee.

### D. Tenants of Less Than 90 Days

A displaced person who has occupied the displacement dwelling for a period of less than 90 days prior to the initiation of negotiations or who took occupancy after the initiation of negotiations is normally ineligible for a rent supplement or replacement housing payment. However, if the displacee is in occupancy when the dwelling is acquired by the LPA and if comparable decent, safe, and sanitary housing cannot be made available within the displacee's financial means (within 30 percent of the displacee's average household monthly gross income), the displacee may be eligible for a replacement housing payment. The displaced person is not entitled to a replacement housing payment if comparable decent, safe, and sanitary housing is available within 30 percent of the displacee's average household monthly gross income.

If occupancy is less than 90 days and the base rent of the replacement dwelling is within 30 percent of their gross household income, then a comparable residence is made available, but the displacee is not eligible for a rent supplement. If occupancy is less than 90 days and the base rent of the replacement dwelling is greater than 30 percent of their gross household income, the comparable residence is made available and the displacee is eligible for a rent supplement.

In preparation of the relocation offer, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Officers Statement [ROW 681] to document moving expenses and rent supplement, as applicable.
- Determines moving expenses based on the schedule in the *Relocation Assistance Guide* or based on a minimum of two estimates obtained from commercial movers. Moving expenses for additional personal property may be calculated using estimates obtained by the LPA Relocation Section.
- Completes the Computation of Rent Supplements Payments [ROW 712], if applicable. Rent supplement payments are determined by converting actual monthly rent to a "base monthly rent." The base monthly rent includes appropriate adjustments allowing for perceived differences in estimated monthly utility costs (heat, light, water, and sewer) not included in the actual rent. Additional adjustments based on gross family income or any

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housing assistance payments may be required in establishing a “base monthly rent” for the dwelling. The Relocation Agent may request information verifying utilities costs, gross family income, and/or housing assistance payments. If a tenant of 90 days or more does not pay market-based rent (for example, housing is provided in exchange for labor or a family relationship allows for discounted rent), the Relocation Agent may establish a market-based rent on the displaced dwelling. The Relocation Agent researches comparable rents to establish the market-based rent. The market-based rent is reviewed and approved by the Relocation Reviewer. Market rent converted to base monthly rent as described above is used to compute a rent supplement for a home owner.

- Sends all documentation to the Relocation Reviewer. Upon approval of Relocation Reviewer, relocation offer can be made.
- Completes Offer Letter (Dwelling Rental/Residential Tenant) [ROW 698] and provides the offer to the displacee.
- Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to the displacee.

### E. Mobile Home Relocation

The Appraiser determines whether the mobile home is real or personal property in the appraisal report. If the mobile home is determined to be personal property, the mobile home is relocated to a replacement lot. Mobile home relocation must consider the following ownership/tenant and personal/real property scenarios:

- **Displacee Owns Mobile Home and Lot and Mobile Home is Personal Property**  
If the displacee owns the mobile home and the lot and the mobile home is determined to be personal property, the Relocation Agent:
  1. Completes the Relocation Assistance Advisory Form (Residential) [ROW 680] and the Relocation Assistance Officer's Statement [ROW 681].
  2. Obtains two (2) estimates from mobile home movers of the cost to move the mobile home if the estimate is over \$2,000. If the estimate is under \$2,000, then one estimated is obtained.
  3. Calculates the moving expense offer on the Relocation Assistance Officer's Statement [ROW 681] utilizing the most cost efficient of the estimates received. An occupant who moved from a mobile home may be paid for removal of personal property from the mobile home and site in accordance with the moving expense and dislocation allowance schedule as determined by the number of rooms and whether the person owns or does not own the furniture. Such person also may choose reimbursement for moving expenses on an actual, reasonable cost basis in lieu of the schedule allowance.
  4. Locates another site and computes a purchase supplement on the Computation of Replacement Housing Payment Form [ROW 716]. This computation determines the amount of the purchase supplement, if any.
  5. Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.
  6. Completes the applicable Offer Letter (Offer Letter: Mobile Home Ownership – 180 Days or More [ROW 699] or Offer Letter: Mobile Home – Short Term Owner [ROW 700]).
  7. Completes Relocation Assistance Officer's Statement [ROW 681] to document the offer.
- **Displacee Owns Mobile Home and Lot and Mobile Home is Real Property**

## Relocation

If the displacee owns the mobile home and the lot and the mobile home is determined to be real property, the Relocation Agent:

1. Locates a replacement mobile home either at a mobile home dealership or on an individual lot and prepares a Comparable Replacement Housing Description [ROW 689].
2. Prepares Comparable Analysis Form [ROW 904] for the lot and the mobile home. This could be a Comparable Analysis Form [ROW 904] for the lot and mobile home separately, or a combination.
3. Completes the Relocation Assistance Advisory Form (Residential) [ROW 680] and the Relocation Assistance Officer's Statement [ROW 681].
4. Calculates a purchase supplement offer for Computation of Replacement Housing Payment for Owner of a Mobile Home and Site (for owner occupant of 180 days or more) [ROW 716]
5. Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.
6. Completes the Offer Letter (Offer Letter: Mobile Home Ownership – 180 Days or More [ROW 699] or Offer Letter: Mobile Home – Short Term Owner [ROW 700]).
7. Completes the Relocation Assistance Officer's Statement [ROW 681] to document the offer that was made.

▪ **Displacee Owns Mobile Home and Rents Lot and Mobile Home is Personal Property**

If the displacee owns the mobile home and rents the lot, the mobile home is almost always personal property. In this case, the Relocation Agent:

1. Completes the Relocation Assistance Advisory Form (Residential) [ROW 680] and the Relocation Assistance Officer's Statement [ROW 681].
2. Obtains two (2) estimates from mobile home movers of the cost to move the mobile home if the estimate is over \$2,000. If the estimate is under \$2,000, then one estimated is obtained.
3. Calculates the moving expense offer on the Relocation Assistance Officer's Statement [ROW 681] utilizing the most cost efficient of the estimates received. An occupant who moved from a mobile home may be paid for removal of personal property from the mobile home and site in accordance with the moving expense and dislocation allowance schedule as determined by the number of rooms and whether the person owns or does not own the furniture. Such person also may choose reimbursement for moving expenses on an actual, reasonable cost basis in lieu of the schedule allowance.
4. Locates a comparable site and computes a rent supplement on Computation of Rent Supplement Form [ROW 712]. This computation determines the amount of the rent supplement, if any.
5. To verify rent, obtains rent receipts for the displacement lot.
6. Establishes a base rent, which is the amount of the rent plus the utilities. The utility costs are obtained from the Relocation Miscellaneous File for the project area.
7. Completes computation of Rent Supplement Payments [ROW 712].
8. Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.

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9. Provides an offer to the displacee on the applicable form (Offer Letter: Mobile Home Ownership – 180 Days or More [ROW 699] or Offer Letter: Mobile Home – Short Term Owner [ROW 700]).
10. Completes Relocation Assistance Officer's Statement [ROW 681] to document the offer that was made.

▪ **Displacee Rents Mobile Home and Rents Lot and Mobile Home is Personal OR Real Property**

When the displacee rents the mobile home and rents the lot, the Relocation Agent relocates the tenant and provides the mobile home owner an offer to move the mobile home (moving expense only) if the mobile home is personal property. The Relocation Agent also provides advisory assistance to the mobile home owner in finding a replacement lot.

Tenants must have occupied property for at least 90 days prior to initiation of negotiations to obtain full relocation benefits. Regardless of length of occupancy, tenants may be eligible for moving expenses. If occupancy is less than 90 days and the replacement dwelling base rent is within 30 percent of their gross household income, the comparable residence is made available but they are not eligible for rent supplement. If occupancy is less than 90 days and the replacement dwelling base rent is greater than 30 percent of their gross household income, the comparable residence is made available and they are eligible for rent supplement.

If a tenant does not pay market-based rent (for example, housing is provided in exchange for labor or a family relationship allows for discounted rent), the Relocation Agent may establish a market-based rent on the displaced dwelling. The Relocation Agent researches comparable rents to establish a market-based rent. The market-based rent is reviewed and approved by the Relocation Reviewer.

In preparation of the relocation offer for residential tenant relocations, the Relocation Agent completes the following activities:

1. Completes the Relocation Assistance Advisory Form (Residential) [ROW 680] and the Relocation Assistance Officers Statement [ROW 681] to document moving Expense Computation and rent supplement calculation.
2. Determines moving expenses by the schedule in the *Relocation Assistance Guide* or are based on a minimum of two estimates obtained from commercial movers. An occupant who moved from a mobile home may be paid for removal of personal property from the mobile home and site in accordance with the moving expense and dislocation allowance schedule as determined by the number of rooms and whether the person owns or does not own the furniture. Such person also may choose reimbursement for moving expenses on an actual, reasonable cost basis in lieu of the schedule allowance.
3. Prepares Comparable Replacement Housing Description [ROW 689] for each house the Relocation Agent researches as a comparable.
4. Prepares Comparable Analysis Form [ROW 904] listing displacement house and a description of up to three comparable houses, if available.
5. Completes Computation of Rent Supplement Payments [ROW 712] to determine the amount of the rent supplement, if any.
6. Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.

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7. Completes Offer Letter [Offer Letter: Mobile Home Short-Term Owner and Tenant ROW 700] and provides the offer to the displacee.
8. Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to displacee.

### 6.5 Last Resort Housing

The methods of providing last resort housing include, but are not limited to the following:

- Rehabilitation of and/or addition to an existing replacement dwelling;
- Construction of a new replacement dwelling;
- Provision of a direct loan;
- Provision of a replacement housing payment. Although state law provides for maximum replacement housing payments of \$25,000 and \$8,000, all payments exceeding \$22,500 and \$5,250 federal limits will be considered and documented as last resort housing. A rental assistance subsidy under this section may be provided in installments;
- Relocation and, if necessary, rehabilitation of an existing dwelling;
- Purchase of land and/or a replacement dwelling by the LPA and subsequent sale or lease to or exchange with a displaced person;
- Removal of barriers to disabled persons;
- Change in status, with the displaced person's consent, from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment; and
- Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the replacement dwelling such as the use of a mobile home to replace a very substandard or non-decent, safe, and sanitary conventional dwelling, or the use of a smaller decent, safe, and sanitary dwelling to replace a larger, old substandard dwelling, only a portion of which is being used as living quarters by the occupants. However, in all cases the replacement dwelling must be adequate to accommodate the displaced person and be functionally equivalent, as defined in these regulations, to the displacement dwelling.

### 6.6 Non-Residential Relocation

#### 1. Payment Categories

When relocation assistance is provided to a business, farm, or nonprofit organization, the Relocation Agent estimates and provides moving expenses to the displacee. The LPA is not obligated to make available a replacement site, however, relocation advisory services may be provided.

Displaced businesses (including landlords of rental property, if qualified), farm operations, and nonprofit organizations are entitled to reimbursement of moving and related expenses for the removal and installation of personal property which is required to be moved as a result of the acquisition. Payment may be on the basis of actual, reasonable, and necessary costs. The types of payments are provided below:

#### A. Actual Reasonable Moving Expense

- *Commercial Moves.* Commercial moves may be paid the actual reasonable costs of the move provided through the services of a commercial mover. All expenses must be supported by receipted bills.
- *Self Moves.* If the non-residential displacee elects to take full responsibility for all or part of the move, the LPA may approve a payment for moving expenses in an amount not to exceed the lowest acceptable bid or estimate minus profits. This

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payment is based on a certified inventory of the personal property and can be claimed without submission of any additional documentation

- *Actual Direct Losses of Tangible Personal Property.* If the move payment is based on actual reasonable moving expenses, the non-residential displacee also may be eligible for actual direct loss of tangible personal property incurred as a result of moving or discontinuing the operations of the business, farm, or nonprofit organization. No payment for loss of tangible personal property, however, can be greater than the cost of moving and reinstalling the items.
- *Searching Expenses for Replacement Property.* Displaced businesses, farms, or nonprofit organizations who move on an actual cost basis may be reimbursed for actual reasonable expenses related to searching for a replacement property, not to exceed \$2,500. All such expenses, except actual time spent in search and the actual value of time and mileage driven in a personal vehicle, must be supported by receipted bills. Payment for actual time spent searching shall be based on the current hourly wage of the person(s) conducting the search, but may not exceed \$20 per hour. Actual mileage claimed for use of a personal vehicle in search shall not exceed the prevailing rate authorized for reimbursement to state employees for use of a personal vehicle. A daily log of time spent and mileage driven must be kept. A certified statement of time spent, hourly wage rate(s), and mileage driven shall accompany the claim.

To be eligible for reimbursement for the actual reasonable moving expenses, the displacee is required to:

- a. Provide the LPA reasonable advance notice of the approximate date of the start of the move or disposition of personal property; and
- b. Provide the LPA a certified inventory of the items of personal property to be moved; and
- c. Permit the LPA to make reasonable and timely inspections of personal property at both the displacement and replacement sites, and to monitor the move.

### **B. Reestablishment Expense**

A small business, farm, or nonprofit organization also may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred as a direct result of relocating and reestablishing such business, farm, or nonprofit organization at a replacement site. For this purpose, a small business is defined as one having at least one, but not more than 500 employees working at the site being acquired or displaced.

*Eligible reestablishment expenses.* Reestablishment expenses must be reasonable and necessary as determined by the LPA. Such expenses must be verified by receipted bills and/or other valid documentation. They may include, but are not limited to:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code, or ordinance.
2. Modifications to the replacement property to accommodate the business operation or make replacement structure suitable for conducting the business.
3. Construction or installation costs for exterior signing to advertise the business.
4. Provision of utilities from right of way to improvements on the replacement site.
5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpet.
6. Licenses, fees, and permits when not paid as part of moving expenses.
7. Feasibility surveys, soil testing, and marketing studies.
8. Advertisement of replacement location.

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9. Professional services in connection with the purchase or lease of a replacement site.
10. Estimated increased costs of operation during the first two years of operation at the replacement site for such items as:
  - a. Lease or rental charges,
  - b. Personal or real property taxes,
  - c. Insurance premiums, and
  - d. Utility charges, excluding impact fees.
11. Impact fees or one-time assessments for anticipated heavy utility usage.
12. For owner-occupants, purchase of replacement site and/or building after acquisition proceeds have been spent on the replacement.
13. For tenant-occupants, down payment and closing costs expended on the replacement site and building.
14. Other items that the LPA considers essential to the reestablishment of business.

In no event may the aggregate sum of all reestablishment expenses exceed the \$10,000 statutory maximum.

*Ineligible Reestablishment Expenses.* This is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
3. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided under paragraph A(v), above.
4. Interest on money borrowed to make the move or purchase the replacement property.
5. Payment to a part-time business operated from the home which does not contribute materially to the household income.



### C. Fixed Payment (in Lieu)

Displaced businesses, farm operations, and nonprofit organizations also may qualify for a fixed payment in addition to actual moving expenses, actual direct losses of personal property, searching expenses, and reestablishment expenses. The fixed payment is based on the average annual net earnings, based upon tax returns, of the displaced business, farm operation, or nonprofit organization. The payment may not be less than \$1,000 nor more than \$20,000.

Basic requirements to qualify for the fixed payment are:

1. *Business.* (a) The LPA will assume the business cannot be relocated without a substantial loss of existing patronage (clientele or net earnings), unless it can prove otherwise; (b) the business is not part of a commercial enterprise having more than three other entities which are not being acquired by the LPA, and which are under the same ownership and engaged in the same or similar business; (c) the business is not operated at a displacement dwelling solely for the purpose of renting the such dwelling to others; (d) the business is not operated at the displacement site solely for the purpose of renting the site to others; (e) the business contributed materially to the income of the displaced person during the two taxable years prior to displacement.
2. *Farm Operation.* (a) the acquisition caused the operator to be displaced from the farm operation on the remaining land; or (b) the acquisition caused a substantial change in the nature of the farm operation.
3. *Nonprofit Organization.* (a) cannot be relocated without a substantial loss of existing patronage (membership or clientele).

The computation of the fixed payment (in lieu) is based upon the average annual net earnings for two taxable years immediately preceding the taxable year during which the enterprise is relocated. Information must be provided to support the net earnings.

### 2. Non-Residential Offer

In preparation of the relocation offer for a business, farm, or nonprofit organization, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Advisory Information (Non Residential) [ROW 679] and the Relocation Assistance Officers Statement [ROW 681]
- Completes Personal Property Form [ROW 708]
- Obtains moving expense estimates for the removal and re-installment of miscellaneous personal property or calculates moving expense offer based on documentation in the Project Miscellaneous File.
- Calculates the moving expense offer Alternate Moving Cost – Method for Business, Farm, or Nonprofit – Claim for Payment [ROW 691]
- Obtains two (2) estimates from mobile home movers of the cost to move the mobile home if the estimate is over \$2,000. If the estimate is under \$2,000, then one estimated is obtained.
- Documents the computation of reestablishment expenses, the computation of search expenses, and the computation of loss of tangible personal property expenses on the Relocation Assistance Officers Statement [ROW 681]
- Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.

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- Completes offer letter [ROW 705: Business, Farm, or Nonprofit Organization Offer Letter] and provides the offer to the displacee.
- Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to displacee.

### 3. Miscellaneous Personal Property

At the beginning of the project, moving cost estimates for various personal property items are obtained and filed in the LPA Relocation Section's Miscellaneous File. For miscellaneous personal property, the Relocation Agent may use moving cost estimates available in the LPA Relocation Section's Miscellaneous File.

The Relocation Agent may need to obtain additional moving estimates for items that are not addressed in the LPA Relocation Section's Miscellaneous File (e.g., underground storage tanks).

In preparation of the relocation offer miscellaneous personal property, the Relocation Agent conducts the following activities:

- Completes Relocation Assistance Advisory Information (Non Residential) [ROW 679] and the Relocation Assistance Officers Statement [ROW 681]
- Completes Personal Property Form [ROW 708]
- Obtains moving expense estimates for the removal and re-installment of miscellaneous personal property or calculates moving expense offer based on documentation in the Project Miscellaneous File.
- Obtains two (2) estimates from mobile home movers of the cost to move the mobile home if the estimate is over \$2,000. If the estimate is under \$2,000, then one estimated is obtained.
- Provides all documentation to the Relocation Reviewer for approval. Upon approval, the relocation offer may be made.
- Completes offer letter [ROW 705: Business, Farm, or Nonprofit Organization Offer Letter] and provides the offer to the displacee.
- Prepares a Relocation Assistance Officers Statement [ROW 681] to document the offer made to displacee.

## 7. Other Relocation Procedures

### 7.1 Abandonments

The LPA's policy is to relocate all personal property. In rare circumstances it may be necessary for the property owner to abandon personal property instead of relocating it. If abandonment is necessary, the Relocation Agent obtains approval from the Relocation Supervisor. The Relocation Supervisor consults with the LPA Property Management Section prior to approval. Following approval of the abandonment, the Relocation Agent completes an Abandonment Statement and obtains the property owner's signature on the form. The Relocation Agent then sends a copy of the Abandonment Statement via memorandum to the District Engineer, District Coordinator, Property Management Section, Project Engineer, and the Relocation File. Abandoned personal property is not entitled to relocation benefits.

### 7.2 Relocation Offer Adjustments<sup>25</sup>

Once the relocation offer letter is provided to the displacee, the offer may change if the selected comparable is sold. If after the offer was made, the comparable is sold and the property has not been acquired and the price of the comparable offered is no longer within

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the displacee's financial means (as defined by the US Code of Federal Regulations), the Relocation Agent may re-compute the comparables if doing so is in the best interest of the LPA.

Changes to moving expense reimbursements may occur after the offer letter is provided to the displacee, if the inventory of personal property changes (something was missed on the original inventory). The property owner may appeal the level of assistance through a formal appeal process. Please refer to Section 8 of this Chapter of the LPA Right of Way Operations Manual for the relocation appeal process.

### 7.3 Fair Rental<sup>26</sup>

If the LPA permits a former property owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the LPA on short notice, the rent shall not exceed the fair market rent for such short occupancy.<sup>27</sup>

### 7.4 Sale of Improvement to Displaced Person

An improvement acquired by the LPA may be sold to any party who qualifies as a displaced person. The displacee may be required to pay the salvage value upon receipt of the improvement. This means of improvement disposal should be utilized only in the absence of sufficient available comparable housing, and at a time in the overall right of way acquisition process when it will not jeopardize the awarding of the highway construction contract. This request must come in the form of a memorandum from the LPA Relocation Section to the LPA Property Management Section including a letter from the displacee stating that they will be using the improvement for their replacement housing.

## 8. Relocation Appeal

### 8.1 Time Limit for Initiating Appeal<sup>28</sup>

Displacees may file written appeals to the LPA within 60 days of receiving written notification of the LPA's relocation assistance determination of eligibility, offer amount, or denial of claim.

### 8.2 Appeal Format

Any aggrieved displacee may file a written appeal with the LPA if the displacee believes that the LPA has failed to properly consider the person's application for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or, the amount of, a litigation or relocation payment.<sup>29</sup> The displacee is provided with Relocation Appeal Form [ROW 692]. The LPA considers a written appeal regardless of the form (letter, Relocation Appeal Form [ROW 692], or other format).<sup>30</sup>

The displacee can appeal payments or eligibility. The appeal may be given to any Relocation Agent or mailed to the LPA.

### 8.3 Receipt and Notification of Appeal

The recipient of the appeal informs the District Coordinator and the Relocation Supervisor of the appeal via memorandum.

### 8.4 Continuation of Acquisition and Relocation

The acquisition and relocation can continue on a property undergoing appeal, at the discretion of the Acquisition Officer and/or the Relocation Supervisor.

### 8.5 Appeal Review

The LPA promptly reviews appeals in accordance with the requirements of applicable laws and regulations.<sup>31</sup> In deciding an appeal, the LPA considers all pertinent justification, all materials submitted by the displacee, and all other available information to ensure a fair and

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full review of the appeal.<sup>32</sup> The LPA reviews the appeal, other information submitted by the displacee, and all other available information.

The LPA permits a displacee to inspect and copy all materials pertinent to his or her relocation assistance appeal, except materials that are classified as confidential by the LPA (for example, appraisals are classified as confidential by the LPA). The LPA may, however, impose reasonable conditions on the displacee's right to inspect, consistent with applicable laws.<sup>33</sup>

### 8.6 Appeal Response

Within 30 days of receipt of the appeal, the LPA shall review and respond in writing to the appeal. If the aggrieved party remains unsatisfied, the aggrieved party must, within 30 days, notify the LPA in writing of their refusal to accept the decision of the LPA. The appeal shall then be referred to an independent hearing officer selected by the Office of the Attorney General. A recorded hearing will be held at a time and place and in the manner prescribed by the hearing officer. Further, appeals from this hearing shall be in accordance with Section 43-39-25 MCA 1972 annotated.

### 8.7 Displacee Right to Representation<sup>34</sup>

A displacee has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the displacee's own expense, unless otherwise ordered by the court.

## 9. Relocation Payments and Closing

### 9.1 Payment Documentation<sup>35</sup>

Any claim for a relocation payment must be supported by a reasonable amount of documentation to support the expenses incurred. Examples of such documentation include: bills, certified prices, appraisals, or other evidence of such expenses. The displacee completes a Claim for Payment Form [ROW 690 or ROW 704] attaches documentation and submits it to the Relocation Agent. The Relocation Agent provides assistance necessary to complete and file any required claim for payment.

The LPA may make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.<sup>36</sup>

### 9.2 Expeditious Payments<sup>37</sup>

Relocation Agents must complete claims in an expeditious manner. The claimant is promptly notified as to any additional documentation that is required to support the claim. Payment for a valid and approved claim is made as soon as feasible following receipt of sufficient documentation to support the claim.

### 9.3 Advance Payments<sup>38</sup>

If a displacee demonstrates the need for an advance relocation payment to avoid or reduce a hardship, the LPA issues the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

### 9.4 Time Limit for Filing<sup>39</sup>

All claims for relocation payments must be filed with the LPA within 18 months after either:

- For tenants, the date of displacement;
- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

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This time period may be waived by the LPA for good cause.

### **9.5 Payment to Multiple Occupants of One Displacement Dwelling<sup>40</sup>**

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the LPA, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the LPA determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

### **9.6 Deductions from Relocation Payments<sup>41</sup>**

The LPA deducts the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, the LPA may, deduct from relocation payments any rent that the displaced person owes the LPA; provided that no deduction is made if it would prevent the displaced person from obtaining a comparable replacement dwelling. The LPA does not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

### **9.7 Notice of Denial of Payment Claim<sup>42</sup>**

If the LPA disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the LPA promptly notifies the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

### **9.8 Vacancy Notification<sup>43</sup>**

Upon vacating and closing on improvements, a memorandum [Vacancy Memorandum] is sent to the LPA Property Management Section and the District Coordinator as notification of the closing and vacancy. The vacancy memorandum includes any keys, combinations, and other access information.

## **10. Ongoing Relocation Services**

### **10.1 Environmental Concerns**

The LPA personnel, including all ROW Agents, immediately report any potentially contaminated sites, historical sites, archaeological sites, or other environmental concerns to the ROW Environmental Coordinator.

### **10.2 Relocation Assistance Officers Statement**

The Relocation Assistance Officers Statement [ROW 681] is used to document any interactions with displacees and any new information such as claims, or other items that need review. A new form is used for each interaction.

### **10.3 Coordination of Relocation Activities<sup>44</sup>**

Relocation activities are coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

### **10.4 Notification of Acquisition of New Relocation Cases**

Appraisers note all known relocation cases on the appraisal. During the project, additional relocation cases may be identified. Upon identification of an additional relocation case, the Relocation Agent notifies the Appraisal Supervisor and the Acquisition Supervisor of the relocation case via memorandum.

### **10.5 Correspondence by Registered/Certified Mail**

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If not delivered in person, correspondence may be sent by either certified or registered mail with the mail receipts placed in the Master Relocation File and a copy in the Field File.<sup>45</sup>

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<sup>1</sup> 49 CFR 24.10(b).

<sup>2</sup> 49 CFR 24.204(a-c).

<sup>3</sup> 49 CFR 24.208.

<sup>4</sup> 49 CFR 24.205(c)(1).

<sup>5</sup> 49 CFR 24.301, 49 CFR 24.302, 49 CFR 24.303, 49 CFR 24.304, 49 CFR 24.305, and 49 CFR 24.306.

<sup>6</sup> 49 CFR 24 Subpart E.

<sup>7</sup> FHWA Project Development Guide. Section 10. Relocation Assistance Guide. Revised May 18, 2000.

<sup>8</sup> 49 CFR 24.203.

<sup>9</sup> 49 CFR 24.203(c)(1-2).

<sup>10</sup> 49 CFR 24.203(c)(4).

<sup>11</sup> MDOT Policy, 2002. To minimize burden on the displacee (in accordance with 49CFR24.205(d)) and to be more efficient for MDOT.

<sup>12</sup> 49 CFR 24.5.

<sup>13</sup> 49 CFR 24.205(i).

<sup>14</sup> MDOT Policy, 2002.

<sup>15</sup> 49 CFR 24.208.

<sup>16</sup> 49 CFR 24.206.

<sup>17</sup> 49 CFR 24.205(c)(2)(i)(c)

<sup>18</sup> 49 CFR 24.205(B).

<sup>19</sup> 49 CFR 24.205(C).

<sup>20</sup> APPENDIX 49 CFR 24.205(c)(2)(ii)(C).

<sup>21</sup> MDOT Policy, 2002.

<sup>22</sup> 49 CFR 24.5.

<sup>23</sup> 49 CFR 24.205(B).

<sup>24</sup> 49 CFR 24.401

<sup>25</sup> MDOT Policy, 2002.

<sup>26</sup> 49 CFR 24.102(m).

<sup>27</sup> Section 301(6) of the Uniform Act.

<sup>28</sup> 49 CFR 24.10(c):

<sup>29</sup> 49 CFR 24.10(a).

<sup>30</sup> 49 CFR 24.10(a).

<sup>31</sup> 49 CFR 24.10(a).

<sup>32</sup> 49 CFR 24.10(f).

<sup>33</sup> 49 CFR 24.10(e).

<sup>34</sup> 49 CFR 24.10(d).

<sup>35</sup> 49 CFR 24.207(a).

<sup>36</sup> Appendix 49 CFR 24.207(a).

<sup>37</sup> 49 CFR 24.207(b).

<sup>38</sup> 49 CFR 24.207(c).

<sup>39</sup> 49 CFR 24.207(d).

<sup>40</sup> 49 CFR 24.207(e).

<sup>41</sup> 49 CFR 24.207(f).

<sup>42</sup> 49 CFR 24.207(g).

<sup>43</sup> MDOT Policy, 2002.

<sup>44</sup> 49 CFR 24.205(d)

<sup>45</sup> 49 CFR 24.5.

**Mississippi Department of Transportation  
Right of Way Operations Manual**

**Survey, Maps & Deeds**

The following procedures document the responsibilities of the LPA Right of Way Survey, Maps & Deeds Section for preparing acquisition maps and deed instruments to use in the acquisition of property for public transportation projects.

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**1. General Map and Deed Policies**

**1.1 Title Abstracts**

Title abstracts are required as a means of identifying the current and historic owners of properties, identifying property description, and identifying lien holders and judgments. This information provides the foundation for preparing the ROW Acquisition Map and deed(s) for each parcel to be acquired for transportation projects. These Title Abstracts, as well as the preparation of surveys, maps, and deeds are charged as ROW Incidentals (as defined in the Definitions Sections of the LPA ROW Operations Manual.

**1.2 ROW Acquisition Maps**

The LPA ROW Survey, Maps & Deeds Section prepares a ROW Acquisition Map for all property to be acquired. The ROW Acquisition Map, which is the foundation for coordinating parcel acquisition, assigns parcel numbers in order to identify the parcels, provides ROW Agents with an orientation of parcels on the right of way and, for each parcel, it identifies the property owner, take acreage, any improvements, and remaining acreage. The ROW Acquisition Map also identifies any easements.

**1.3 Deeds<sup>1</sup>**

In accordance with Federal Regulations, the property owner of any property to be acquired is given a description and location identification of the real property to be acquired. This must be a legally sufficient description of the parcel, which means that the property is sufficiently described so that a surveyor could locate the subject property.<sup>2</sup> At a minimum, deed instruments must include the following<sup>3</sup>:

1. Names of the grantor and grantee, both of which must have legal capacity
2. Name, address, and phone number of the person who prepared the instrument
3. Name, address, phone number, and marital status of the property owner
4. Parcel name, number, and acreage
5. Section, township, and range
6. If subdivision, lot and block number
7. Notation of the consideration
8. Granting or conveyance clause and other relevant clauses
9. Quantity and quality of the property interest
10. Legally sufficient description of the property and indexing and structuring. Proper legal tie to one of the state authorized land reference systems (Government Land Office section tie, subdivision, state plane coordinate law)
11. Space for the signatures of the grantor(s) and witness
12. An acknowledgement (notary sheet)

**1.4 Deed Instrument Revisions**

In all cases, changes resulting from new ownership or project/plan revisions are updated in the deed and other instruments. For each change, the instrument must be renumbered.<sup>4</sup> Changes in a deed may require a new appraisal and a new offer to the property owner.

## **Survey, Maps & Deeds**

### **1.5 Other Instruments**

Other instruments are prepared to insure the LPA has a clear understanding of the property to be acquired.

If a deed of trust covers the acquisition area in part or in whole, a partial release is required for the area that overlaps. It is noted "hitting" or "not hitting," as appropriate. Deed of trust lines on the ROW Acquisition Map show the area covered, if it is a partial coverage. If the deed of trust covers the whole parcel, deed of trust lines on the ROW Acquisition Map are not required. The partial releases must match W-Deeds, Q-Deeds, and X-Deeds. It is possible to have multiple partial releases

### **1.6 Standards of Practice Maps or Plats**

Standards of practice maps or plats may be prepared as required. The plat shall conform to the Mississippi State Board of Registration for Professional Engineers and Land Surveyors: *Rules and Regulations of Procedure*. Rule No. 21.

### **1.7 Acquiring Easements**

To assist in the acquisition of easements, the LPA ROW Survey, Maps & Deeds Section identifies easements on ROW Acquisition Maps. When acquiring property that is adjacent to an easement owned by the same property owner, MDOT makes its best effort to acquire that easement. It is the LPA's policy to acquire full Title on easements adjacent to property the LPA is acquiring. If the property owner does not want to provide the LPA with full title to the easement, the LPA still has a right to use the easement.

## **2. Map and Deed Preparation**

### **2.1 Preparation of ROW Survey, Maps & Deeds Project File**

At the initiation of a project, the District Office creates a project number and the District Coordinator requests that the LPA Title Section obtain tax maps, current deeds, lot and block information, and all maps, based on deeds and other court records.

Upon receipt of the above information from the LPA Title Section, the LPA ROW Survey, Maps & Deeds Section establishes a new ROW Survey, Maps & Deeds Project File. Each of the following items are added to the ROW Survey, Maps & Deeds Project File, as they are received:

- Tax maps
- Recorded plats of individual parcels and subdivisions
- Historical research findings
- Aerial photography
- Current deeds
- Lot and block information
- Other documentation and notes

Where possible, all information is obtained in electronic format as well as hard copy.

### **2.2 Tax Map Overlay**

Once the tax map is received, the LPA ROW Survey, Maps & Deeds Section, occasionally upon request, pulls aerial photographs from an electronic library and creates a Tax Map Overlay. Aerial photographs are not pulled, however, until the final project alignment has been selected. The LPA ROW Survey, Maps & Deeds Section sends a Tax Map Overlay electronic file to the LPA Title Section.

### **2.3 Historical Research**

The ROW Survey, Maps & Deeds Section conducts the following research:

- Searches MDOT records for existing ROW Acquisition Maps and deeds. Deeds must be recorded deeds.



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- Searches MDOT records for “as-built” construction plans.
- Searches for deeds on current right of way to determine if the LPA only has an easement. If deeds are not available, requests that the LPA Title Section locate the deeds.
- Where applicable, researches Government Land Office Survey Plats and Notes at the Secretary of State, Land Management Bureau for sectional information. Researches township plats, available electronically from the Secretary of State.

The LPA ROW Survey, Maps & Deeds Section retains copies of all research in the LPA ROW Survey, Maps & Deeds Project File.

### 2.4 Materials Provided for Development of ROW Acquisition Map

The materials provided to the LPA ROW Survey, Maps & Deeds Section for use in the development of ROW Acquisition Maps include the following:

- Property Maps
- Right of Way Plans
- Title Abstracts
- Historical research data

As received, each item is added to the ROW Survey, Maps & Deeds Project File.

### 2.5 Distribution of Field Review Plans and Final ROW Plans

Upon receipt from the LPA ROW Survey, Maps & Deeds Section Field Review Plans (an early release set of plans for cost estimate preparation) and Final ROW Plans are distributed according to the schedule below.

Field Review Plans:

1 copy – LPA ROW Survey, Maps & Deeds Section  
1 copy – LPA Appraisal Section  
1 copy – LPA Relocation Section  
1 copy – LPA Utility Relocation Section  
1 copy – LPA Property Management Section (Clearance)  
1 copy – LPA Title Section  
1 copy – ROW District Coordinator  
7 copies – TOTAL

Final ROW Plans:

1 copy – LPA Property Management Section (Clearance)  
2 copies – Consultant (1 copy each consultant, 2 maximum)  
1 copy – LPA Title Section  
1 copy – ROW District Coordinator  
2 copies – LPA ROW Survey, Maps & Deeds Section  
7 copies – TOTAL

### 2.6 Preparation of Consolidated Title Work Map

Once the LPA ROW Survey, Maps & Deeds Section receives a property map and Final ROW Plans, the ROW Technician superimposes Final ROW Plans on the property map to create a Consolidated Title Work Map (CTWM). The CTWM can include Final ROW Plans, property map, aerial photographs (from photogrammetry or other resources), quadrangle sheets (from United States Geological Survey), and other pertinent and available information.

The LPA ROW Survey, Maps & Deeds Section distributes the CTWM to the LPA Title Section for completion of title research.

### 2.7 Development of ROW Acquisition Map

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ROW Acquisition Maps are prepared from construction plans, property surveys, and title abstracts. When title abstracts are completed, ROW Technicians develop ROW Acquisition Maps based on current ownership as described in the title abstract. ROW Acquisition Maps show proposed and existing right of way lines, centerlines, property lines, proposed access limits, parcel numbers, acreage of right of way for each parcel acquired, remaining acreage for each property (see description of calculation of remainder below), pertinent topographic and construction features, and improvements. Parcel numbers are assigned as set out by these procedures.

Right of way acreage and other measurements on the deed are carried to the 2<sup>nd</sup> decimal point (e.g., 0.25 acres). If requested, for urban areas or areas of high value, square footage can be obtained from the closure statement. Any acquisition area less than 0.10 acres is shown in square footage.

In most instances, the remainder is calculated by taking the aggregate of the property owners' deeds from the abstract and subtracting the required surveyed acquisition area. In situations where deeds are vague or contain incorrect descriptions, the manner in which the remainder is calculated is denoted on the ROW Acquisition Map. In all cases, the remainder calculation is based on best available data.

As ROW Acquisition Maps are developed, ROW Technicians refine the CTWM based on additional research of the LPA Title Section and the LPA ROW Survey, Maps & Deeds Section. This research includes a review of ownership records (32-year history) for easements, changes in ownership, judgments or liens, and partial release requirements.

### **2.8 ROW Acquisition Map Review and Verification**

The ROW Technician Squad Leader reviews each ROW Acquisition Map and verifies that each item on the following checklist has been included or addressed:

- Existence of a east or west transpose (for example, use mapping software and description to determine if it is not closed),
- Secondary roads (names and numbers),
- Liens not necessarily on the entire property,
- Centerlines,
- Property lines,
- Existing right of way lines,
- Section lines,
- Proposed and present access limits,
- Property owner names,
- Connection road names,
- Deed of trust lines,
- Parcel numbers,
- Acreage of right of way for each parcel acquired,
- Remaining acreage for each property,
- Pertinent topographic and construction features,
- Improvements,
- Subdivision names, lots, and blocks,
- North arrow,
- Scale,
- Note on how acreage is calculated 'as measured' or 'according to deed,' and
- White line composites (to be included in the future).

### **2.9 Deed Plot**

Based on the deed description, the ROW Technician develops a closure report to verify that the parcel closes within acceptable limits. The ROW Technician also checks the calls for

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typographical errors. The closure report includes bearings and distances, acreage of the acquisition area, and deed of trust lines. The ROW Technician verifies acreage and closure. If there are inaccuracies, these are corrected, a revised description is prepared, and the ROW Acquisition Map is corrected accordingly.

### 2.10 Distribution of ROW Acquisition Map

The LPA ROW Survey, Maps & Deeds Section provides the following staff with the designated number of copies of the ROW Acquisition Map.

4 copies – Appraisal Supervisor (also provided copies of construction plans, deeds, closure report, aerial photography, five-year sales history, and other necessary instruments)

2 copies – Acquisition Officer

2 copies – District Engineer

1 copy – District Coordinator

1 copy – Review Appraisal Supervisor

1 copy – Property Management Officer

1 copy – Maintenance Engineer

1 copy – Utilities Coordinator

1 copy – Relocation Supervisor

1 copy – Relocation/Acquisition Officer

1 copy – FHWA (for federal aid projects only)

16 copies – TOTAL

### 2.11 Preparation of Federal Land Maps

For Indian Reservation Territories and federal agency-owned lands, the LPA ROW Survey, Maps & Deeds Section prepares a Federal Land Map that shows all parcels owned by a particular agency on a single map. All Federal Land Maps meet minimum standards and are approved by a licensed surveyor.

### 2.12 Identification of Deed Instruments

Based on a review of title abstracts, the ROW Technician determines the necessary instruments for the property acquisition. These instruments may include the following:

- W-Deed (Warranty Deed) [ROW 005] – to acquire fee simple title to right of way
- X-Deed – to acquire fee simple title to an uneconomic remnant or landlocked remainder. Often the LPA Appraisal Section requests X-Deeds from the LPA ROW Survey, Maps & Deeds Section. Upon request of an X-Deed, the LPA ROW Survey, Maps & Deeds Section prepares an X-Deed with a description of the remaining acreage.
- Q-Deed (Quitclaim Deed) [ROW 640D] – to acquire interests other than fee-simple, e.g. leases, life estate, etc.
- H-Deed [ROW 083] – to acquire signage, billboards.
- G-Deed – to acquire access rights.
- Facilities Deed – to acquire property outside of eminent domain procedures for non-right of way purposes, e.g. LPA buildings.
- Permanent Easement [ROW 017] – to acquire the right to the limited use by the LPA in the land of a property owner. An easement is a nonpossessory and intangible interest.
- Temporary Easement [ROW 761] – to acquire the right to the limited use by the LPA in the land of a property owner. An easement is a nonpossessory and intangible interest. Temporary easements are used to acquire access to property around the project site for ramps, culverts, and ponds. All other construction-related activities, such as detour roads, sloping and grading, etc. must be acquired under a Warranty Deed (W-Deed) [ROW 005].

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- Partial Release of Mortgage [ROW 695] – to cure the title

### 2.13 Preparation of ROW Deed Descriptions

As ROW Acquisition Maps are developed, the ROW Technicians begin to prepare property descriptions. When the ROW Acquisition Map is completed, the ROW Technician continues to prepare and finalize descriptions for each property. The description is used for deeds and other necessary instruments.

The following components of the deed must be present and accurate:<sup>5</sup>

1. Names of the grantor and grantee, both of which must have legal capacity
2. Name, address, and phone number of the person who prepared the instrument
3. Name, address, phone number, and marital status of the property owner
4. Parcel name, number, and acreage
5. Section, township, and range
6. If subdivision, lot and block number
7. Notation of the consideration
8. Granting or conveyance clause and other relevant clauses
9. Quantity and quality of the property interest
10. Legally sufficient description of the property and indexing and structuring. Proper legal tie to one of the state authorized land reference systems (Government Land Office section tie, subdivision, state plane coordinate law)
11. Space for the signatures of the grantor(s) and witness
12. An acknowledgement (notary sheet)

### 2.14 Preparation of Project Overlay Maps

Upon request, ROW Technicians prepare Project Overlay Maps by overlaying the property lines and project lines on aerial photos.

## 3. Ongoing Map and Deed Activities

### 3.1 Standards of Practice Maps or Plats

Standards of practice maps or plats may be prepared as required. Per the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, the plat shall conform to the following requirements and shall include the following information:<sup>6</sup>

- a. The plat shall be drawn on any reasonably stable and durable drawing paper, vellum, linen, or film of reproducible quality. No plat or map shall have dimensions of less than 8 1/2 x 11 inches.
- b. The plat shall show the scale, acreage, and classification of the survey (A, B, C or D). These classifications are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments which are disclosed by the client. This classification must be based on the criteria in Appendix A, and the survey must meet the minimum specifications set forth in Appendix B. Scale shall be sufficient to show detail for the appropriate classification.
- c. The reference meridian used to conduct the survey shall be stated on the survey plat. A definitive north arrow shall be shown on the plat. All surveys will be referenced to a true meridian by accepted methods with the following exceptions: (a) those used in existing subdivisions; (b) those shown on city or town plats; or, (c) those shown on a previous survey when the current survey is a division of said previous survey and enough monumentation is available to establish the original orientation. If a meridian established by the compass is used, the compass must be properly declinated and adjusted to a True Meridian. Regardless of the meridian used, the survey must be referenced to a well-defined line, group of monuments, reference points, etc. of a normally assumed

permanent nature so the orientation of the survey can be re-established. This reference line and its relation to the meridian used must be clearly shown on the survey plat.

- d. All monuments, natural and artificial (man-made), found or set shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than 3/8 inch in diameter, and not less than eighteen inches in length, except however, a corner which falls upon solid rock, concrete or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these Standards. Witness Corners shall be set whenever a corner monument cannot be set or is likely to be disturbed. Such witness corners shall be set as close as practical to the true corner and shall meet the same physical standards that would be required for the true corner were it set. If only one (1) witness corner is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness corners shall be set and so noted on the plat of the survey. Concrete right-of-way markers may be acceptable as monuments on all roadways, streets, and utility rights-of-way, and may be placed only at points where right-of-way width or direction change.
- e. The plat of a metes and boundary survey must clearly describe and show the commencing point and show the point of beginning for the survey. Commencing Point is a well defined monumented point referenced to the U.S. Public Land (GLO) Survey system or other recorded reference system compatible with Mississippi Statutes for recording land ownership that is used in a metes and bounds description. Point of Beginning is a well defined monument point referenced to the U.S. Public Land Survey system or other system compatible with Mississippi Statutes for recording land ownership that is used as the beginning and ending point in a metes and bounds land description.
- f. All discrepancies between the survey and the record description, and the source of all information used in making the survey shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, or when any doubt as to the location on the ground of the true boundary or property rights exists, the nature of the inconsistency shall be clearly shown on the drawing.
- g. A description and location of any physical evidence of occupation found along a boundary line, including fences, walls, buildings or monuments.
- h. The horizontal length (distance) and direction (bearing or azimuth) of each line as specified in the legal description and as determined in the actual survey process.
- i. At least three (3) elements of all circular curves shall be shown. When intersecting boundary lines are nonradial or nontangential, at least the delta, radius, arc, and chord bearing and distance shall be shown.
- j. All information used by the surveyor in the property description shall be clearly shown on the plat, including the point of beginning, course bearings, distances, etc.
- k. The lot and block or tract numbers or other designations, including those of adjoining lots and tracts if the survey is within a recorded subdivision.
- l. Visible encroachments onto or from adjoining property or abutting streets with the extent of such encroachment.
- m. All public and private rights-of-way or easements which are known or observed adjoining or crossing the land surveyed.
- n. Location of all permanent improvements pertinent to the survey, with reference to the boundaries.
- o. Anytime State Plane Coordinates are used to designate the geographic position of a point on a survey in the State of Mississippi, these surveys must be performed in compliance with state Law (Chapter No.462, Senate Bill Number 2131, approved March 29, 1991).

## **Survey, Maps & Deeds**

- p. A plat or survey shall bear the name, address, date of field survey, and signature and seal (either embossed or stamped) of the registered surveyor in responsible charge. This signature and seal is certification that the survey meets the minimum requirements of the Standards for Land Surveyors in Mississippi as adopted by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors. Other regulations including the Manual of Instructions for the Survey of U.S. Public Lands and all subdivision Laws and regulations of the State of Mississippi Statutes shall be followed.

### **3.2 Notification to Roadway Design Division of Potential Causes for Redesign**

The LPA ROW Survey, Maps & Deeds Section may identify any of the following factors that may be cause for potential redesign:

- Acquisition of small parcels that could be avoided,
- Historical or environmental issues that could be avoided,
- Adjusting no access limits to avoid a relocation or large uneconomic remnant, and/or
- Examination of the use of frontage roads to avoid large right of way acquisition costs.

### **3.3 Plan Changes**

The Roadway Design Division notifies the LPA ROW Survey, Maps & Deeds Section as soon as any Final ROW Plan changes are identified. The ROW Survey, Maps & Deeds Section provides notification to the District Coordinator and all ROW Section Supervisors and Officers via memorandum detailing the change and its effect on right of way acquisition. The acquisition process on affected parcels may be put on hold until revised title abstracts, maps, deeds, and other instruments are prepared.

### **3.4 Map Updates**

During the life of a project, the ROW Survey, Maps & Deeds Section revises ROW Acquisition Maps, Federal Land Maps, Condemnation Maps, and other maps to correct errors, accommodate project/plan changes, and identify new land transfers. The LPA ROW Survey, Maps & Deeds Section provides ROW Agents with revised maps throughout the life of the project.

### **3.5 Deed Instrument Revisions**

In all cases, changes resulting from new ownership or project/plan revisions are updated in the deed and other instruments. For each change, the instrument must be renumbered.<sup>7</sup> Deed revisions are numbered sequentially from 0 (for the original deed) through 9 and then A through Z for any revised deeds. This accommodates up to 36 deed revisions (0, 1, 2, 3, 4, 5, 6, 7, 8, 9, A, B, C, D, E, etc.). Changes in a deed may require a new appraisal and a new offer to the property owner.

### **3.6 Project Archives**

The LPA ROW Survey, Maps & Deeds Section maintains an archive of all ROW Acquisition Maps and right of way plans, including revised plans.

## **4. Relinquishments**

Highway facilities in which federal funds participated in either the right of way acquisition or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620.203(b).<sup>8</sup> As a result, property originally purchased as right of way by the LPA, may need to be transferred (or relinquished) to a local government entity. Said relinquishment must be approved in writing by FHWA.

### **4.1 Request Received**

The District receives all relinquishment requests. Upon the District Engineer's approval of the relinquishment request, the District forwards the relinquishment request with a map showing the area to be relinquished to the Property Disposal Supervisor. The Property Disposal

## Survey, Maps & Deeds

Supervisor and the LPA Title Section review the request and provide the request to the LPA ROW Survey, Maps & Deeds Section.

### 4.2 Relinquishment Deed

The ROW Survey, Maps & Deeds Section completes a Quit Claim (Q-Deed) Deed [ROW 640] and a Relinquishment Agreement between the LPA and the local government for the relinquished property and sends the deed and Relinquishment Agreement to the Property Disposal Supervisor.

### 4.3 LPA Approval

The LPA must approve all relinquishments.

### 4.4 Execution of Deed and Agreement

Following approval by the LPA, the Property Disposal Supervisor obtains the signature of an authorized representative of the locality on the deed and Relinquishment Agreement. The Property Disposal Supervisor then files the deed at the Courthouse and provides a copy of the deed and the Relinquishment Agreement to the District.

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<sup>1</sup> 49 CFR 24.102(e)(2)

<sup>2</sup> MDOT Policy, 2002. Based on the definition of 'Description' in the *Handbook of Real Estate Terms*, Dennis S. Tosh, Jr., Prentice Hall, Englewood Cliffs, NJ, 1992. Civil engineers without professional surveyors' license are prohibited in the state of Miss. from ROW, easements, or property activities (Cite: Miss Code 73-13 Definitions of Engineer.).

<sup>3</sup> MDOT Policy, 2002. Adapted from the definition of 'Deed' in the *Handbook of Real Estate Terms*, Dennis S. Tosh, Jr., Prentice Hall, Englewood Cliffs, NJ, 1992.

<sup>4</sup> MDOT Policy, 2002.

<sup>5</sup> *Handbook of Real Estate Terms*. Dennis S. Tosh, Jr., Prentice Hall, Englewood Cliffs, NJ, 1992.

<sup>6</sup> Mississippi State Board of Registration for Professional Engineers and Land Surveyors. *Rules and Regulations of Procedure*. Rule No. 21. <http://www.pepls.state.ms.us/web10.htm>. December 1, 2001.

<sup>7</sup> MDOT Policy, 2002.

<sup>8</sup> 23 CFR 710.403 (g).

### Local Public Agency Right of Way Operations Manual

#### Utility Relocation

The following procedures document the responsibilities of the LPA for the relocation of utilities from transportation project right of way.

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## 1. General Utility Relocation Policies

### Overall Authority and Responsibility

The Utility Coordinator consults with utility companies, attorneys, and consulting engineers about utility-related design, right of way, and legal matters and is the liaison between the LPA and the utility industry. The Utility Coordinator monitors all agreements with utility companies, but the responsibility for individual field inspections for utility relocation rests with the LPA.

### Utility Relocation Agreements<sup>1</sup>

Where utilities must be relocated, the utility company and the LPA agree in writing on their separate responsibilities for financing and accomplishing utility relocation work.

### Initiation of Work<sup>2</sup>

A utility company is not compensated for any work, other than preliminary engineering, that is initiated prior to approval and execution of a Utility Relocation Agreement by the LPA.

### Final Utility Relocation Invoice<sup>3</sup>

The LPA must receive a final invoice from the utility company within twelve (12) months of final inspection, unless an extension is requested. If a final invoice is not received in this timeframe, no further invoices are accepted by the LPA and the project is closed.

## 2. Utility Relocation Procedures

### 2.1 Materials Provided for Utility Relocation

District Office personnel locate and submit to the Roadway Design Division complete survey data on every utility that may conflict with the proposed transportation project construction. This survey information includes both the existence and location of underground utilities and is incorporated into the final ROW plans.

The Utility Liaison receives two sets of final ROW plans from the Roadway Design Division. The Utility Liaison forwards the final ROW plans to the appropriate District Utility Coordinator with an accompanying memorandum requesting a cost estimate.

### 2.2 Preparation of the Utility Project Miscellaneous File

The Utility Liaison prepares a Utility Project File for general correspondence on the project that is not specific to individual utilities. The following information is added to the Utility Project File throughout the utility relocation process:

- Final ROW plans and accompanying transmittal memorandum from the Roadway Design Division,
- Monthly Utility Relocation Project Control Sheets [ROW 480],
- Cost Estimate Memorandum,

### 2.3 District Utility Coordinator Site Visit and Final ROW Plan Review



## Utility Relocation

The District Utility Coordinator conducts a site visit to verify the existence and location of the utilities noted on the final ROW plans. Any differences in the final ROW plans and the site are noted and changes to the final ROW plans are requested of the District Construction Engineer or the Assistant District Construction Engineer.

### **2.4 District Utility Coordinator Preliminary Cost Estimate Preparation**

Based on the site visit and final ROW plan review, the District Utility Coordinator develops a preliminary estimate of utility relocation costs. Factors considered in developing the cost estimate include the number of poles, square footage, and historical cost evidence. Cost estimates are completed and returned to the Utility Liaison via memorandum [Cost Estimate Memorandum]. The Utility Liaison adds an additional 15 percent to the cost estimate for Consulting Engineering costs associated with the utility relocation, and forwards the cost estimate to the Assistant Division Administrator, with copies to the ROW Accounting Manager, District Utility Coordinator, and Utility Project Miscellaneous File. Upon creation of the program and approval of funding, the ROW Engineering Section status report is updated to show approval of incidental utility funding and the Utility Liaison and appropriate District Utility Coordinator are notified.

### **2.5 Initial Notification to Utility Companies**

Upon approval of incidental funding, the Utility Liaison, in coordination with the District Utility Coordinator, decides when the utility company will be notified and provided with the final ROW plans. This decision is based on the construction letting date and other project-specific circumstances. All utility companies are given as much advance notice as possible. On most projects, the utility company has at least one (1) year of notice.

The Utility Liaison reviews final ROW plans to determine the number of utilities that are affected and requests the appropriate number of sets of final ROW plans from Roadway Design Division by memorandum [Order Plans Memorandum].

The Utility Liaison sends the Notification Letter [Notification Letter] to the utility company(ies) with a copy to the District Utility Coordinator. This Notification Letter [Notification Letter] includes the following items:

1. A letter describing the proposed construction and specific instructions for completing the Utility Agreement Form (federal [ROW 800] and state [ROW 801]);
2. A set of final ROW plans; and
3. Appropriate Utility Agreement Forms (federal [ROW 800] and state [ROW 801]).

### **2.6 Parcel Tracking System**

The Property Management Section Utility Liaison enters the utilities that are contacted for the project and the date of the Notification Letter [Notification Letter] into the parcel tracking system.

### **2.7 Individual Utility Company File**

The Utility Liaison creates an Individual Utility Company File for the project for each affected utility. Individual Utility Company File for the projects may include the following:

- All correspondence
- Initial Notification Letter [Notification Letter]
- Engineering Agreement (ROW 044)
- Appropriate Utility Agreement Forms (federal [ROW 800] and state [ROW 801])
- Field Inspection Memorandum [Field Inspection Memorandum]
- Supplemental Agreements
- Invoices
- Audit Requests
- Other information that relates to that specific utility

## Utility Relocation

### 2.8 Utility Relocation Project Control Sheet

Following notification of the utility company(ies), the Project Engineer initiates the Utility Relocation Project Control Sheet [ROW 480] to monitor the utility relocation project. The Utility Relocation Project Control Sheet [ROW 480] tracks each utility company's progress and adherence to the agreed upon start and completion dates. The Utility Relocation Project Control Sheet [ROW 480] is entered electronically and is shared with the Utility Liaison monthly for verification and filing in the Utility Project Miscellaneous File. The Utility Relocation Project Control Sheet [ROW 480] information also is used to supplement and update the parcel tracking system.

### 2.9 Project Engineer Utility Relocation Responsibilities

The Project Engineer is responsible for authorizing physical utility adjustments, maintaining daily inspection records, and submitting a monthly Utility Relocation Project Control Sheet [ROW 480]. Upon completion of each utility company adjustment, the Project Engineer certifies to the Utility Liaison, with a copy to the District Utility Coordinator, that the utility work is complete, acceptable, and in accordance with the terms of the Utility Relocation Agreement.

### 2.10 Field Inspection

The District Utility Coordinator conducts a field inspection and meets with a representative of the utility company to determine the extent of utility conflicts and if the utilities are located on private or public right of way. The District Utility Coordinator verifies that all utility facilities are shown on the construction plans and ensures that the utility company representative understands the extent to which costs are to be absorbed by the utility company. The District Utility Coordinator also advises the utility company of potential eligibility for 100 percent reimbursement of relocation costs in accordance with Senate Bill 2183 or Senate Bill 2250.

After the field inspection, the District Utility Coordinator reports the results of the inspection in a Field Inspection Memorandum [Field Inspection Memorandum]. The Field Inspection Memorandum [Field Inspection Memorandum] includes the name of the utility company, names of field inspection participants, date of inspection, extent of relocation required, proportionate share of costs to be borne by each party, cost ratios for the project, and other pertinent facts.

The District Utility Coordinator sends the Field Inspection Memorandum [Field Inspection Memorandum] to the District Engineer with copies to the Property Management Section (Utility Liaison), FHWA (as required), and other relevant parties.

### 2.11 Utility Relocation Agreement and Engineering Agreement Preparation and Approval

The utility company and MDOT must agree in writing on their separate responsibilities for financing and accomplishing the relocation work. The Utility Relocation Agreement (federal [ROW 800] and state [ROW 801]) must be supported by plans, specifications (when required), and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide MDOT and FHWA with a clear description of the work required.<sup>4</sup> When the relocation involves both work to be done at MDOT's expense and work to be done at the expense of the utility, the written agreement states the share to be borne by each party.<sup>5</sup>

#### A. Preparation of Utility Relocation and Engineering Agreements

Based on the instructions provided in the Notification Letter [Notification Letter] from MDOT and the Field Inspection Memorandum [Field Inspection Memorandum], the utility company prepares a Utility Relocation Agreement. This agreement is prepared on Form ROW 800 (if federal) or Form ROW 801 (if state), as appropriate. The District Utility Coordinator responds to any inquiries of the utility company as they complete the Utility Relocation Agreement and ensures that the Agreement is completed in a timely manner. The Utility Company submits

## Utility Relocation

the Utility Relocation Agreement and attachments to the District Engineer. The Utility Relocation Agreement and attachments include, at a minimum, the following:

1. A written recommendation for acceptance.
2. An estimate of total cost including the proration to be borne by each party. The estimate sets forth direct labor, labor surcharges, overhead and indirect construction charges, materials and supplies, handling charges, transportation, equipment, right of way, preliminary engineering, construction engineering, salvage credits, betterment credits, and accrued depreciation credits. The proration of cost is calculated using the entire length of relocation required on private right of way or easement along the center line of the utility (gas line, power line, transportation line, etc.) to the total length of existing utility on public right of way measured along the utility. For example:

Utility Proration =

$$\frac{\text{Length of existing utility in conflict with the project and on private ROW}}{\text{Total length of existing utility in conflict with the project}}$$

$$\text{Utility Proration} = \frac{100 \text{ (private)}}{300 \text{ (total)}} = 0.333$$

MDOT Proration =

$$\frac{\text{Length of existing utility in conflict with the project and on public ROW}}{\text{Total length of existing utility in conflict with the project}}$$

$$\text{MDOT Proration} = \frac{200 \text{ (public)}}{300 \text{ (total)}} = 0.667$$

The cost of utility adjustments is reimbursable according to the following guidelines:

- Where utilities are located on private property and the utility company has a compensable interest, the cost of required adjustments or relocation are borne by MDOT.
  - Where utilities are located on public right of way and highway construction or maintenance requires their relocation or adjustment, costs are borne by the utility company.
  - Where water, sewer and gas utilities are owned by a municipality with a population under 10,000, a rural water/sewer association, or a non-profit water/sewer association, the costs of any relocation or adjustment of these facilities are borne 100 percent by MDOT. (As self-certified by the utility in the utility agreement on Form ROW 800 (if federal) or Form ROW 801 (if state), as appropriate)
  - Where there is no record of a highway right of way purchase but a road has been maintained as a public thoroughfare and where construction or maintenance requires the adjustment or relocation of a utility within monumented right of way lines, removal or adjustment costs are borne by the utility company. Monumented lines determine the width of the right of way claimed by MDOT and may be fence lines, mowing lines, the intersect of slopes with the natural ground, etc.
3. Plans or drawings showing the existing facilities and the temporary or permanent changes to be made. The plans are an exhibit to the Utility Relocation Agreement and must include the following data:
    - a. Location, length, size and/or capacity, type, class, and pertinent operating conditions and design features of existing, proposed, and temporary facilities including proposed changes thereto and disposition thereof by appropriate nomenclature, symbols, legend, notes, color-coding, or the like;
    - b. Project number, plan scale, and date;

## Utility Relocation

- c. Horizontal and, where appropriate, vertical location of the utility facilities in relation to the highway alignment;
  - d. Geometric features;
  - e. Stationing;
  - f. Grades;
  - g. Structures and other facilities;
  - h. Proposed and existing right of way lines;
  - i. Access control lines, where applicable; and
  - j. Limits of right of way to be acquired from, by, or on behalf of the utility, where applicable.
4. That portion of the work, if any, to be accomplished at the sole expense of the utility.
5. Evidence of compensable property interest of the utility.
6. Evidence of engineering staff or consultant. If a utility company does not have engineering personnel on staff or a continuing contract with an engineering consultant, the utility company should obtain an engineering consultant. During the field inspection, the District Utility Coordinator provides an Engineering Agreement [ROW 044] between the utility and the utility's engineer to be completed by the utility's engineer and returned for approval. The District Utility Coordinator responds to any inquiries of the utility company as they complete the Engineering Agreement [ROW 044] and ensures that the Agreement is completed in a timely manner. The Utility Company submits the Engineering Agreement [ROW 044] and attachments to the District Engineer who forwards it to the District Utility Coordinator for review. Following the District Utility Coordinator's review, the District Utility Coordinator sends it to the utility liaison recommending approval. The utility liaison submits the Engineering Agreement [ROW 044] to the Mississippi Transportation Commission for approval.
7. Value of any potential damage to crops, if applicable. Relocation of utilities may require access that may damage growing crops. The utility company determines the value of crops in coordination with the owner of the crops to establish a value of the crop prior to initiating the relocation.

### **B. Review of Submitted Utility Engineering and Relocation Agreements**

Following submittal of the Engineering Agreement [ROW 044] and Relocation Agreements to the District Engineer, the District Utility Coordinator reviews the agreements and requests any necessary changes from the utility company. The District Utility Coordinator reviews the plans, estimates, and agreements to determine conformity with the agreement reached during the field inspection and to the policies and procedures of MDOT. If the utility company is non-responsive to the District Utility Coordinator's requests, the District Utility Coordinator may request District Engineer assistance. Where an Engineering Agreement [ROW 044] is required, it must be approved prior to the relocation agreement. Following the District Utility Coordinator's review, the District Utility Coordinator sends the agreements to the utility liaison recommending approval.

## Utility Relocation

### **C. Approval of Utility Relocation and Engineering Agreements**

Once the Utility Relocation Agreement and the Engineering Agreement [ROW 044] are satisfactory and finalized, they are approved by the District Engineer and submitted to the Utility Liaison for review. Following the Utility Liaison's review, the Utility Liaison submits the agreements to the Mississippi Transportation Commission for approval. The agreements must be approved by the Mississippi Transportation Commission and executed by MDOT's Executive Director.

### **D. Notice to Proceed**

Following Mississippi Transportation Commission approval and execution by the Executive Director, the Utility Liaison forwards an executed copy of the Utility Relocation Agreement with an instructional letter [Notice to Proceed Letter, Advertise for Bids Letter, Lump Sum Notice to Proceed Letter] to the utility company with copies provided to District Utility Coordinator, consultants, attorneys, the District Engineer, the Project Engineer, appropriate MDOT Divisions, and other interested parties. When federal funds are involved, the executed utility agreement is submitted to FHWA for approval prior to authorization of the work.

### **E. Parcel Tracking System Update**

Upon approval of the utility relocation agreement, the Property Management Section Utility Liaison updates the parcel tracking system to show the utility agreement is approved.

## **2.12 Agreements with Municipal Utilities**

The policy of the Mississippi Transportation Commission regarding payment for relocating and adjusting utilities within the corporate limits of a municipality is as follows:

1. A municipality makes adjustments to its own facilities located within a dedicated street right of way coincident with a highway project at no cost to MDOT.
2. MDOT reimburses a municipality for relocating or adjusting its facilities located within a dedicated street right of way crossed by a highway project not coincident with a city street.
3. If a municipality has a compensable property interest, MDOT reimburses the costs of relocating or adjusting the municipal facilities located outside a dedicated street right of way.
4. On projects with full control of access where a municipality has a compensable property interest or where the municipal facilities are located on a dedicated street right of way, MDOT reimburses costs of relocating or adjusting the facilities.
5. A municipality is responsible for the relocation, at no cost to MDOT, of any nonmunicipal utilities located within a dedicated street right of way.
6. If a nonmunicipal utility has a compensable property interest, MDOT reimburses the cost of relocating or adjusting its facilities.

## **2.13 Utility Contract Supplemental Agreements**

If there are changes in the scope of work covered by the approved Utility Relocation Agreement, a Supplemental Utility Agreement must be approved. This Supplemental Utility Agreement must be requested by the utility prior to the final audit report.

To obtain a Supplemental Utility Agreement, the utility must make a request in writing. This request constitutes the Supplemental Utility Agreement and is provided to the District Utility Coordinator who forwards it to the utility liaison via a Supplemental Utility Agreement Memorandum [Sample Supplement Memo] that includes the following information:

- Original Utility Relocation Agreement amount,
- Amount of the requested supplement,

## Utility Relocation

- Revised total agreement amount,
- Justification for the supplement such as identification of additional utilities in the project area),
- Recommendation signature from the District Engineer, and
- Space for recommendation signatures of the Utility Liaison, Assistant Division Administrator, and the Assistant Chief Engineer for Pre-Construction.

The Utility Liaison then submits the Supplemental Utility Agreement to the Mississippi Transportation Commission for authorization of MDOT Executive Director approval. MDOT Executive Director approval and Mississippi Transportation Commission authorization are attached to the Supplemental Utility Agreement. The Utility Liaison forwards copies of the approved Supplemental Utility Agreement with a cover letter (Supplemental Approval Letter) to the Utility, the District Utility Coordinator, consultants, attorneys, District Engineer, Project Engineer, appropriate MDOT divisions, and other interested parties. The original Supplemental Utility Agreement is maintained in the Individual Utility Company File for the project.

### **2.14 Reimbursable Costs**

MDOT reimburses utility companies for costs incurred in the relocation of facilities if such costs are in accordance with the statement of work contained in the Utility Relocation Agreement or modifications, adequately documented, incurred subsequent to the date of authorization, and are not in violation of state or federal laws and regulations.

### **2.15 Lump Sum Contracts**

When the estimated cost of the proposed utility relocation work on a project for a specific utility company is \$75,000 or less, MDOT may enter into an agreement with the utility for a lump-sum payment without later confirmation by audit of actual costs.<sup>6</sup>

### **2.16 Invoice Processing**

Utility company invoices should follow the general order of the items in the cost estimate portion of the Utility Relocation Agreement and modifications. The utility company must indicate on the invoice whether it is a progress or final invoice. Utility company invoices for final billing or progress billing are submitted to the District Engineer, or designated representative, for examination and recommendation for approval. Invoices are then forwarded to the Utility Liaison for processing. The Property Management Section Utility Liaison enters the invoice into the Financial Management System (FMS) and updates the Parcel Tracking System, as applicable.

The Financial Management Division provides payment checks to the Property Management Section and the Utility Liaison drafts a letter to the utility company [Forward Check Letter] to accompany the payment. If the payment is made in full, a copy of the audit report is attached. The payment check and accompanying letter is sent to the utility company via registered/certified mail or via electronic deposit. Except for lump sum agreements, the Utility Liaison forwards final invoices by memorandum [Request Audit Memo] to the MDOT Audit Division for review and approval. Final payment is not made prior to the issuance of an audit report.

Upon receipt of the final invoice, the MDOT Auditor recommends final payment including payment of retainage. Upon receipt of the audit report, the Property Management Section requests a check through the Financial Management System. The Utility Liaison drafts a letter to the utility company [Forward Check Letter] to accompany the payment. If the payment is made in full, a copy of the audit report is attached. The payment check and accompanying letter is sent to the utility company via registered/certified mail or via electronic deposit.

## Utility Relocation

Invoices are recorded in the Parcel Tracking System including FMS transaction number, warrants, and mailing of checks. This information in Parcel Tracking System enables a monitoring of each Utility Agreement. All utility company cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three (3) years from the date final payment has been received by the utility.<sup>7</sup>

MDOT must receive a final invoice for payment on utility relocation from the utility company within twelve (12) months of final inspection, unless an extension is requested.<sup>8</sup> If the final invoice is not received in this timeframe, no further invoices are accepted and the project is closed. In these cases, the auditor would calculate the retainage declared by the utility company on all prior invoices and declare any retainage due to the utility company as part of their final audit.

### 2.17 Final Relocation Inspection

Once utility relocation is complete, the District Utility Coordinator requests that the Project Engineer conduct a final inspection and certify that relocation is complete. The Project Engineer prepares a statement certifying that work is complete in accordance with the details of the Utility Relocation Agreement and all modifications. This certification is provided to the Utility Liaison with a copy to the District Engineer, the District Utility Coordinator, and ROW Legal Section, and is included with the ROW certification (please refer to the Legal ROW Operations Manual for additional information on the ROW Certification).

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<sup>1</sup> 23 CFR 645.113(c).

<sup>2</sup> MDOT Policy, 2002.

<sup>3</sup> MDOT Policy, 2002. 23 CFR 645.117(i)(2).

<sup>4</sup> 23 CFR 645.113(c).

<sup>5</sup> 23 CFR 645.113(d).

<sup>6</sup> 23 CFR 645.113(f).

<sup>7</sup> 23 CFR 645.117

<sup>8</sup> MDOT Policy, 2002. 23 CFR 645.117(i)(2).